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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~295.~~ 97

PINCKNEY C. BETHELL, PLAINTIFF IN ERROR,

vs.

EDWARD MATTHEWS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOVEMBER 17, 1870.

Feb 10 1872

affirmed

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SUPREME COURT OF THE UNITED STATES.

No. 295.

PINCKNEY C. BETHELL, PLAINTIFF IN ERROR,

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 *Transcript from the 4th district court of New Orleans.—Filed March 21st, 1866.*

Circuit court of the United States, fifth circuit, and district of Louisiana.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

Petition.—Filed 6th January, 1866.

In the 4th district court of New Orleans.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 16083.

To the Honorable P. E. Theard, judge of the 4th district court of New Orleans:

The petition of Pinckney C. Bethell, who resides in the parish
2 of St. Mary's, in the State of Louisiana, respectfully represents: That Edward Matthews, of the city and State of New York, is justly and truly indebted to your petitioner in the full sum of four thousand dollars with interest for this, to wit, that your petitioner is the holder and owner of two promissory notes for five thousand dollars each made by John S. Chambliss, of the county of Wilkinson, State of Mississippi, the one dated New Orleans, January 26th, 1861, payable on the 1st of November, 1861, to the order of and endorsed by Brander & Hubbard. The other dated Port Gibson, Miss., Oct'r 4th, 1861, payable six months after date to his own order, and endorsed by said Chambliss, Brander & Hubbard, in liquidation, and Brander, Chambliss & Co. That said notes were made payable at the office of Brander & Hubbard, & Brander, Chambliss & Co., respectively, and were there presented at maturity and payment refused. That the said notes were then protested for non-payment and notices of protest duly served on the makers and endorsers thereof. That the firm of Brander & Hubbard was dissolved by notarial act before Theo. Guyol, not. pub.,
3 on the 17th day of March, 1861. That in the act of dissolution to which said Edward Matthews was a party, it was stipulated that the firm of Brander, Chambliss & Co., should assume the indebtedness of the firm of Brander & Hubbard. That by notarial act before the same notary, the copartnership of Brander, Chambliss & Co., was formed, and James S. Brander, jr., Samuel L. Chambliss, both of the city of New Orleans, and Edward Matthews, of the city and State of New York, were declared to be the general and active partners of the said copartnership of Brander, Chambliss & Co. That the copartnership of Brander, Chambliss & Co., expired by limitation in July, 1862, and that Edward Matthews the owner of ½ interest in said copartnership, still resides in the city and State of New York, and is still bound to your petitioner, as endorser, for the full amount of both notes, with interest, costs of protest, &c. That the said Matthews has no agent or representative in the State of Louisiana to the knowledge of your peti-
4 tioner, but your petitioner verily believes that he has property in the control and possession of the Crescent Mutual Insurance Company of this city.

Wherefore your petitioner prays that the Crescent Mutual Insurance Company of New Orleans be made parties to this suit, as garnishees, and that the president & secretary thereof be ordered to answer under oath the annexed interrogatories, and that the annexed affidavit and bond, being considered a writ of attachment, issue to the sheriff, directing him to seize all rights, credits, and property of the said Edward Matthews now under the control and in the possession of said Crescent Mutual Insurance Company. Your petitioner further prays that a curator ad hoc be appointed to represent the absent defendant, and that after due citation and proceedings had, there be judgment in favor of your petitioner against the Crescent Mutual Insurance Company, for such amount as may be in their hands belonging to said Matthews, with privilege on the same and against the said Edward Matthews, of the city and State of New York, for the full sum of ten thousand dollars, with interest from the maturity of the notes until paid, with all costs, and for general relief.

Respectfully,

(Signed) CHA'S N. MORSE,
Att'y for Pl'ff.

Interrogatories to be propounded to & answered under oath by the president or secretary of the Crescent Mutual Insurance Co.:

1st. Have you in your possession any credits, rights, or property belonging to Edward Matthews, of the city and State of New York?

2d. If so, what is the amount of said indebtedness or property?

(Signed) CHA'S N. MORSE,
Att'y for Pl'ff.

Affidavit.

Charles N. Morse, attorney for Pinckney C. Bethell, being duly sworn, deposes and says that Edward Matthews, who resides out of the State of Louisiana, but has property within the jurisdiction of this hon. court, is justly and truly indebted unto said P. C. Bethell, in the full sum of ten thousand dollars with interest from maturity until paid, which sum, together with interest, is now due and unpaid, and that a writ of attachment is necessary in the premises.

(Signed) CHARLES N. MORSE,
Att'y for P. C. Bethell.

Sworn to and subscribed before me this 6th January, 1866.

(Signed) JNO. M. COONEY,
D'y Cl'k.

Order of court.

Let a writ of attachment issue in this case as within prayed for and according to law, and upon petitioner furnishing bond, with good and solvent security, in the sum of twenty-one thousand dollars, conditioned as the law directs. Let the Crescent Mutual Insurance Company be made garnishees herein and ordered to answer under oath, within the legal delay, the interrogatories herein propounded, and let W. A. Gordon, esq., be appointed curator ad hoc to represent the absent defendant.

New Orleans, 6th January, 1866.

(Signed) PAUL E. THEARD, *Judge.*

7 *Bond.—Filed 6th January, 1866.*

Know all men by these presents that we, Pinckney C. Bethell, as principal, and Robert Hare, as security, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto Edward Matthews in the sum of twenty-one thousand dollars, lawful money of the United States of America, to be paid to the said Edward Matthews, his heirs, executors, administrators, and assigns, for which payment, well and truly to be made, bind we ourselves, and each of us by himself, and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated the 6th day of January, in the year of our Lord 1866.

Whereas the said Pinckney C. Bethell has this day presented a petition to the honorable the fourth district court of New Orleans, praying a writ of attachment against property of said Matthews:

8 Now the condition of the above obligation is, that we, the above-bound Pinckney C. Bethell and Robert Hare, will well and truly pay to the said Edward Matthews, the defendant in said attachment, all such damages as he may recover against us, in case it should be decided that the writ of attachment was wrongfully obtained.

(Signed) PINCKNEY C. BETHELL,
By his att'y, CHA'S N. MORSE. [L. S.]
(Signed) ROBERT HARE. [L. S.]

Signed, sealed, and delivered in the presence of—

Writ of attachment.

Fourth district court of New Orleans.

The State of Louisiana to the sheriff of the parish of Orleans, greeting:

Whereas due proof has been made before the fourth district court of New Orleans by Charles N. Morse, attorney, that Edward Mat-

9 thews, who resides out of this State, is indebted unto Pinckney C. Bethell in the sum of ten thousand dollars, interest and costs, and that the said debtor, Edward Matthews, resides permanently out of the State of Louisiana: now, therefore, you are commanded, in the name of the State of Louisiana and of the fourth district court of New Orleans, to seize and attach, according to law, and take into your possession, the goods and chattels, lands and tenements, rights & moneys, effects and credits of the said debtor, if any you find in said parish, to the amount of what will suffice to discharge the said debt and costs of suit; and that you give notice of this proceeding by leaving a copy thereof at the last place of abode of the said defendant, if in said parish, and the same a copy thereof to be affixed at the door of the parish church of said parish, and make a return of this writ, and endorse the manner thereon in which you have executed it, before our court, according to law.

Clerk's office court aforesaid, this 9th day of January, 1866.

10 [SEAL.] (Signed) JNO. M. COONEY,
D'y Clk.

Citation to garnishee.

State of Louisiana, fourth district court of New Orleans.

The State of Louisiana to the president or secretary of The Crescent Mutual Insurance Co.:

You are hereby cited to declare on oath what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after the service hereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Honorable Paul E. Theard, judge of the said court, this 9th day of January, in the year of our Lord, 1866.

[SEAL.] (Signed) J. M. COONEY,
D'y Clerk.

11 *Sheriff's return to citation to garnishee.—Filed 11th January,* 1866.

Received January 9th, 1866, and on the 10th of same month and year served a copy of within citation and accompanying interrogatories on Thomas A. Adams, personally, president of Crescent Mutual Insurance Company, at the office of said company, corner Commercial alley and Camp street.

Returned same day.

(Signed) W. WALSH,
D'y Sh'ff.

Sh'ff's fees, $1 00.

Citation to defendant.

State of Louisiana, fourth district court of New Orleans.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 16083.

To Edward Matthews, W. A. Gordon, curator ad hoc:

12 You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans in ten days after service hereof.

Witness the Honorable Paul E. Theard, judge of the said court, the 9th day of January, in the year of our Lord 1866.

[SEAL.] (Signed) JNO. M. COONEY,
D'y Clerk.

Sheriff's return to citation.—Filed 11th January, 1866.

Received January 9th, 1866, and on the 10th of same month and year served a copy of within citation and accompanying petition on Mr. W. A. Gordon, curator ad hoc, personally, at his office, No. 30, Carondelet street.

Returned same day.

(Signed) W. WALSH,
D'y Sh'ff.

Sh'ff's fees, $1 00.

13 *Return to writ of attachment to post.—Filed 11th January*, 1866.

Received January 9th, 1866, and on the same day posted copies of the within writ to the door of the church of St. Louis, parish of Orleans, and to that of the room in which this honorable court holds its sittings.

Returned same day.

(Signed) S. P. FARGE,
D'y Sh'ff.

Sh'ff's fees, $3 00.

Return to citation to post.—Filed 11th January, 1866.

Received January 9th, 1866, and on the same day I posted copies of the within citation to the door of the church of St. Louis, parish of Orleans, and to that of the room in which this honorable court holds its sittings.

Returned same day.

(Signed) S. P. FARGE,
D'y Sh'ff.

Sh'ff's fees, $1 00.

14 *Order granting delay.—Filed 9th January*, 1866.

On motion of W. A. Gordon, esq., curator ad hoc., it is ordered that he be allowed a delay of thirty days, to correspond with the above defendant.

Answer of garnishees.—Filed 16th January, 1866.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 16083.

To the first interrogatory deponent answers: There are two certificates of scrip of this company remaining in its possession, standing in the name of Edward Matthews, amounting to the sum of six hundred and forty dollars, and accrued interest thereon amounting to one hundred and twenty-six dollars.

To the second interrogatory the deponent answers: The market value of said scrip and interest is estimated at about four hundred and
15 fifty dollars. The indebtedness of the company is one hundred twenty-six dollars.

(Signed) THOMAS A. ADAMS,
Pres't C. M. Ins. Co.

Sworn to and subscribed before me this 16th January, A. D. 1866.

(Signed) JNO. M. COONEY,
D'y Clk.

Motion and order to dispense with curator.—Filed February 1st, 1866.

On motion of W. Alex. Gordon, curator ad hoc., representing absent defendant, and on suggesting to the court that he has corresponded with the absent defendant, and that said defendant has employed

Messrs. Durant & Hornor as counsel to represent him in above-entitled case, it is ordered that the further services of a curator be dispensed with, and Messrs. Durant & Hornor be recognized as counsel of record in said case.

Sheriff's service of motion.—Filed 6th February, 1866.

16 Received February 2d, 1866, and on the same day, month, and year served copy of the within motion on Mr. Durant & Hornor, personally,

Returned same day, &c.

(Signed) G. ROBERT,
D'y Sh'ff.

Sh'ff's fees, $1 00.

Citation to defendant's attornies.

State of Louisiana, fourth district court of New Orleans.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 16083.

Mr. Edward Matthews, through Durant & Hornor, counsel for defendant:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans in ten days after the service hereof.

Witness the Honorable Paul E. Theard, judge of the said court, the 2d day of February, in the year of our Lord 1866.

[SEAL.] (Signed) E. O. SULLIVAN,
D'y Clk.

17 *Sheriff's service of citation.—Filed 6th February*, 1866.

Received February 2d, 1866, and on the same day, month, and year served a copy of the within citation and accompanying petition on Messrs. Durant & Hornor, personally.

Returned same day, &c.

(Signed) G. ROBERT,
D'y Sh'ff.

Sh'ff's fees, $1 00.

Motion to transfer cause.—Filed 2d February, 1866.

On motion of Durant & Hornor, of counsel for the defendant in this cause, it is ordered by the court that the plaintiff, Pinckney C. Bethell, do show cause on Monday, the 12th day of February, 1866, at 11 o'clock a. m., why the bond and security offered herein should not be accepted, and why this cause should not be transferred for trial to the next term of the circuit court of the United States for the eastern district of Louisiana, for the reasons set forth in the petition of defendant this day filed.

18 *Sheriff's service of motion.—Filed 12th February, 1866.*

Received February 3d, 1866. After diligent search and enquiry, C. N. Morse could not be found.

February 12th, 1866.

(Signed) W. WALSH,
D'y Sheriff.

Sh'ff's fees, 50c.

(Endorsed:)

Service accepted.

(Signed) CHA'S N. MORSE,
Att'y for Bethell.

Petition for removal of cause.—Filed 2d February, 1866.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 16083.

To the Hon. P. E. Theard, judge of the fourth district court of New Orleans:

The petition of Edward Matthews, a citizen and resident of the State of New York, respectfully shows: That he has been sued in this honorable court by Pinckney C. Bethell, a resident and citizen of this
19 State, for the sum of ten thousand dollars; that your petitioner now enters his first appearance in said suit in this cause, and avers that by the twelfth section of the act of Congress of the United States of the 24th day of September, 1789, he has the right to have said cause removed for trial into the next circuit court of the United States to be holden in the eastern district of Louisiana; that the matter in controversy exceeds the sum of five hundred dollars, as appears by reading the said petition of said P. C. Bethell. And your petitioner further shows that he now tenders and has filed in the clerk's office of this court his bond in the penal sum of five hundred dollars, conditioned as the law directs, as required by law. Wherefore your petitioner prays the premises, and the annexed bond considered, that your honor may be pleased to accept the surety offered, and to proceed no further in this case, and to order the removal thereof to the circuit court of the United States for the eastern district of Louisiana.

And petitioner prays for general relief.

20 (Signed) DURANT & HORNOR,
Att'ys for Matthews.

Bond.—Filed 2d February, 1866.

Know all men by these presents that we, Edward Matthews, of New York, by his attorneys, Durant & Hornor, as principal, and W. R. Crane, domiciled in this city, as security, are held and firmly bound unto Pinckney C. Bethell, plaintiff herein, in the penal sum of five hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators firmly by these presents.

Signed, sealed, and delivered at New Orleans, this 2d day of February, A. D. 1866.

Whereas the above-bound Edward Matthews has presented, on this

day to the fourth district court of New Orleans, his petition praying for the removal of the cause wherein P. C. Bethell is plaintiff, and Edward Matthews is defendant, and which is numbered 16083 on the docket, to the next term of the circuit court of the United States for the
21 sixth judicial circuit, and eastern district of Louisiana.

Now, the condition of the above obligation is such, that, if the said Edward Matthews shall, on the first day of the next session of the circuit court for the eastern district of Louisiana, enter copies therein of the process in this cause, and then and there do and perform all the other acts required of them by the laws of the United States in regard to the removal of causes from State courts, then the foregoing obligation shall be null and void; but otherwise to remain in full force and effect.

(Signed) EDWARD MATTHEWS,
By DURANT & HORNOR, *Att'ys.* [L. S.]
(Signed) W. R. CRANE. [L. S.]

Witness:
W. G. BENEDICT.

Citation to plaintiff.

State of Louisiana, fourth district court of New Orleans.

PINCKNEY C. BETHELL
vs. } No. 16083.
EDWARD MATTHEWS.

Mr. PINCKNEY C. BETHELL:

22 You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans in ten days after the service hereof.

Witness the Honorable Paul E. Theard, judge of the said court, the 2d day of February, in the year of our Lord 1866.

[SEAL.] (Signed) E. O. SULLIVAN,
D'y Clk.

Sheriff's return to citation.—Filed 19th February, 1866.

Received February 6th, 1866. After diligent search and enquiry, P. C. Bethell, plaintiff herein, could not be found.
February 17th, 1866.
(Signed) W. WALSH,
D'y Sh'ff.

Sh'ff's fees, $1 00.

(Endorsed:)
Service accepted.
(Signed) CHA'S N. MORSE,
Attorney for Bethell.

23 *Order submitting rule.*

MONDAY, 12*th February*, 1866.

Present, Hon. Paul E. Theard, judge.

The rule pending herein came up this day, plaintiff being absent and not represented. Messrs. Durant & Hornor, attorneys for defendant, submitted the rule, and moved that it be left open for plaintiff.

Order, rule absolute.

TUESDAY, 20*th February*, 1866.

Present, Hon. Paul E. Theard, judge.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 16083.

The court, considering the law and the pleadings herein, ordered that the rule filed on the 2d, and submitted on the 12th, instant by defendant's counsel, be made absolute, and that this cause be transferred for trial to the next term of the circuit court of the United States for the eastern district of Louisiana.

24 *Certificate.*

I, O. W. Austin, clerk of the fourth district court of New Orleans, and State of Louisiana, do certify that the foregoing twenty-seven pages contain a full and correct transcript of proceedings had, documents filed, &c., &c., in the cause wherein Pinckney C. Bethell is plaintiff, and Edward Matthews is defendant, instituted in our said court on the 6th day of January, A. D. 1866, and now on the records of said court under the number 16083.

In testimony whereof I hereunto set my hand and affix the seal of said court this nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-six, and in the ninetieth year of the independence of the United States of America.

[SEAL.] (Signed) O. W. AUSTIN, *Clerk.*

[5-c. int. rev. stamp affixed and cancelled.]

25 *Certificate.*

I, Paul Emile Theard, sole judge of the fourth district court of New Orleans, in the city of New Orleans and State of Louisiana, certify that O. W. Austin, whose signature is written at the foot of the foregoing certificate, is, and was at the date of the signing, clerk of said court; that the attestation is in due form of law, is made by the proper officer, and is in the handwriting of him, said O. W. Austin, clerk, and to his official acts as such full faith and credit are due, owing, and should be obeyed.

Given under my hand and the seal of the court aforesaid, at the city of New Orleans, on this nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-six, and in the ninetieth year of the independence of the United States of America.

[SEAL.] (Signed) PAUL E. THEARD, *Judge.*

[5-c. int. rev. stamp affixed and cancelled.]

26 *Certificate.*

I, O. W. Austin, clerk of the fourth district court of New Orleans, and State of Louisiana, certify that the Honorable Paul Emile Theard, whose signature is by himself written to the foregoing certificate, is now, and was at the date of said certificate, sole judge of the fourth district court of New Orleans, duly commissioned, sworn, and acting.

In faith whereof I grant these presents, at the city of New Orleans, on this nineteenth day of March, A. D. 1866, and in the ninetieth year of the independence of the United States of America.

[SEAL.] (Signed) . O. W. AUSTIN, *Clerk.*

[5-c. int. rev. stamp affixed & cancelled.]

Proceedings before the U. S. circuit court.

Exception and prayer for oyer.—Filed March 27th, 1866.

U. S. circuit court.

27 PINCKNEY C. BETHELL *vs.* EDWARD MATTHEWS. } No. 3818.

Now comes the defendant, Edward Matthews, by his attorneys, and shows to the court that this suit is founded on two commercial instruments in writing, known as promissory notes, on which it is alleged that respondent is liable, as endorser and as a member of the firm of Brander, Chambliss & Co. Respondent shows that said notes have not been filed with the petition, and that he should not be compelled to except or answer thereto until the said notes be filed in court, and a reasonable time given for the examination thereof, especially as these notes have not been signed by this respondent.

Wherefore he prays for oyer of said documents, and that he be dispensed from answering or excepting to this suit until their production and the further order of this hon. court, with all general relief.

(Signed) DURANT & HORNOR,
Att'ys for Defendant.

28 *Marshal's return thereon.*

Received March 27th, 1866, and on the 28th day of same month and year served a copy of the within document on P. C. Bethell, the plaintiff named in the within-named suit, by giving the same into the hands of Cha's N. Morse, esq., who is attorney for said plaintiff, in the U. S. marshal's office in the custom-house building in this city.

New Orleans, March 28th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Note and protest.—Filed March 29th, 1866.

$5,000. NEW ORLEANS, *Jan'y 26th*, 1861.

On the first day of November next (1861) I promise to pay to the order of Brander & Hubbard, at their c.-room in New Orleans, five thousand

dollars, for value received, with interest at the rate of eight per cent. per annum after maturity until paid.

(Signed) JOHN S. CHAMBLISS.

(Endorsed:)

(Signed) JOHN S. CHAMBLISS.
(") BRANDER & HUBBARD.
29 (Signed) P. C. BETHELL,*
* (erased on original.)

STATE OF LOUISIANA:

By this public instrument of protest be it known that, on this fourth day of November, in the year one thousand eight hundred and sixty-one, at the request of the cashier of and holder for The Citizens' Bank of Louisiana, of the original note, whereof a true copy is on the reverse hereof written, I, Adolphe Boudousquie, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, presented said note to G. Burke, esq., the agent of Messrs. Brander & Hubbard, at their office, where it is made payable, and demanded payment thereof, and was answered that no funds had been deposited there to pay said note.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom
30 it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Ernest Petitpain and Paul Grima, both of this city, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) AD. BOUDOUSQUIE.

$5,000. NEW ORLEANS, *January 26th*, 1861.

On the first day of November next, (1861,) I promise to pay to the order of Brander & Hubbard, at their room in New Orleans, five thousand dollars, for value received, with interest at the rate of eight per cent. per annum after maturity, until paid.

(Signed) JOHN S. CHAMBLISS.

(Endorsed:) BRANDER & HUBBARD.
(Erased on orginal.) P. C. BETHEL.

I, the undersigned notary, do hereby certify that the parties to the note, whereof a true copy is above written, have been duly notified
31 of the protest thereof by letters to them by me written and addressed, dated on the day of the said protest, and served on them respectively in the manner following, viz: By directing that for P. C. Bethell to him at Centreville, La., which letter I deposited, pre-paid, in the post office in this city; and by delivering that for Brander & Hubbard to their agent, G. Burke, at their office, by my deputy, E. Petitpain; the whole on the day below written.

In faith whereof I have hereunto signed my name, together with Er-

nest Petitpain and Paul Grima, witnesses, at New Orleans, this fifth day of November, eighteen hundred and sixty-one.

(Signed) AD. BOUDOUSQUIE,
Not. Pub.

PAUL GRIMA.
ER'ST PETITPAIN.

A true copy :

[SEAL.] (Signed) AD. BOUDOUSQUIE.

$5,000. PORT GIBSON, MISS., *October 4th*, 1861.

Six months after date I promise to pay to the order of myself, at the office of Brander, Chambliss & Co., in the city of New Orleans,
32 five thousand dollars, for value received, with interest at the rate of eight per cent. per annum, after maturity until paid.

(Signed) JOHN S. CHAMBLISS.

Due 4–7 April, 1862.

(Endorsed :)

(Signed) JOHN S. CHAMBLISS.
BRANDER & HUBBARD, *in liq'n.*
BRANDER CHAMBLISS & CO.

STATE OF LOUISIANA,
City of New Orleans:

By this public instrument of protest be it known that, on this seventh day of April, in the year one thousand eight hundred and sixty-two, at the request of Robert Hare, esq., holder of the original note, whereof a true copy is on the reverse hereof written, I, Theodore Osborn Stark, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note at the office of Brander, Chambliss & Co., in this city, where the same is made payable, to Mr. Burke, a clerk, and demanded payment thereof, and was answered that the same would not be paid; whereupon
33 I, the said notary, at the request aforesaid, did protest and by these presents do publicly and solemnly protest as well against the drawer or maker of the said notes as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of W. Shannon and Eliager Block, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office at the city of New Orleans, on the day and year first above written.

(Signed) T. O. STARK,
Notary Public.

Original signed—
W'M SHANNON.
E. BLOCK.

T. O. STARK,
Not Pub.

$5,000. PORT GIBSON, MISS., *October 4th*, 1861.

Six months after date I promise to pay to the order of myself, at the

office of Brander, Chambliss & Co., in the city of New Orleans, five thousand dollars for value received, with interest at the rate of eight per cent. per annum after maturity until paid.

34 JOHN S. CHAMBLISS.

(Endorsed:) JOHN S. CHAMBLISS.
BRANDER & HUBBARD, *in liq'n.*
BRANDER, CHAMBLISS & CO.

I, the undersigned notary, do hereby certify that the parties to the note, whereof a true copy is embodied in the accompanying act of protest, have been duly notified of the protest thereof by letters to them, by me written and addressed, dated on the day of said protest and served on them, respectively, this day, in the manner following, viz: By directing one to John S. Chambliss, endorsee at Lake Providence, La., which said notices I deposited in the post-office in this city on the day of said protest in time to go by the first mail thereafter, postage prepaid; and by delivering one directed to Jno. S. Chambliss, one to Brander, Chambliss & Co., and one to Brander & Hubbard, in liq'n, at at the office of Brander, Chambliss & Co., in this city, to Mr. Burke, their agent.

In faith whereof I hereto sign my name together with W'm Shannon and E. Block, witnesses, at New Orleans, this eighth day of April, eighteen hundred and sixty-two.

35 Original signed—

T. O. STARKE,
Not. Pub.

W'M SHANNON.
E. BLOCK.

I hereby certify the above and foregoing to contain a true and correct copy of the original note, protest, and memorandum of the manner in which notices of said protest thereof were served, as fully as the same appear in my current notarial register.

Witness my hand and seal at New Orleans, this 26th day of December, 1865.

[SEAL.] (Signed) T. O. STARK,
Not. Pub.

[5-c. int. rev. stamp affixed and cancelled.]

Exception.—Filed April 18th, 1866.

U. S. circuit court.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

Now comes the defendant, by his attorneys, and excepts to
36 answering herein, on the ground that plaintiff has no right to sue or stand in judgment in this court until he satisfactorily establishes his loyalty to the United States. And defendant avers that plaintiff is worth more than $20,000, and has never been pardoned by the President of the United States.

Wherefore he prays that this suit be dismissed at plaintiff's costs, this

exception being maintained with all further general and equitable relief.

(Signed) DURANT & HORNOR,
Att'ys for Def't.

Hearing and order on exception.—Extract from the minutes.

United States circuit court, fifth circuit, and district of Louisiana, April term, 1866.

NEW ORLEANS, *Thursday, May 24th*, 1866.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

The exception filed by the defendant came up—Miles Taylor,
37 esq., for plaintiff; Durant & Hornor for defendant—when, after hearing the pleadings, and the President's pardon now produced by the plaintiff—

Ordered, That the exception stand over till the plaintiff shall have produced his oath of allegiance.

Motion to overrule exception.—Extract from the minutes of Tuesday, November 13th, 1866.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

Miles Taylor, esq., this day filed the amnesty oath of P. C. Bethell, the plaintiff, and the pardon granted him by the President, and prayed that the defendant's exception be overruled. Wherefore the court took time to advise.

Amnesty oath.—Filed November 13th, 1866.

United States of America, district of West Tennessee.

Personally appeared before me, Isaac Morrison, commissioner
38 for the circuit court of the United States for the district aforesaid, Pinckney C. Bethell, of St. Mary's Parish, and State of Louisiana, and voluntarily took and subscribed the following oath:

"I, Pinckney C. Bethell, do solemnly swear in the presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the Union of States thereunder, and that I will, in like manner, abide by and faithfully support all laws and proclamations which have been made during the existing rebellion with reference to the emancipation of slaves. So help me God.

(Signed) "P. C. BETHELL."

Sworn to and subscribed before me, this 1st day of November, A. D. 1866.

In witness whereof I have set my hand and seal of office hereto.
[SEAL.] (Signed) ISAAC MORRISON,
Commissioner.

I hereby certify that the above oath of Pinckney C. Bethell, was this day taken and subscribed before me in manner and form as therein certified, and the original record thereof, by me transmitted to the
39 Department of State, at Washington, as required by the provisions of the instructions of the Secretary of State of the 29th day of May, A. D. 1865.
Witness my hand and seal of office, in Memphis, this 1st day of November, A. D. 1866.
[SEAL.] (Signed) ISAAC MORRISON,
Commissioner.

[5-c. int. rev. stamp affixed and cancelled.]

Pardon.—Filed November 13th, 1866, and the following receipt for the withdrawal of the same.—Filed March 9th, 1867.

U. S. circuit court, district of Louisiana.

P. C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

Received from the clerk of the United States circuit court of the district of Louisiana, the pardon granted by the President of the United States to Pinckney C. Bethell, and offered by him in evidence on the trial of the above-entitled case on the exception filed therein.
40 March 9th, 1867.
(Signed) MILES TAYLOR,
Att'y for P. C. Bethell.

Order, exception overruled.—Extracts from the minutes of Friday, November 16th, 1866.

P. C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

The court having duly considered this case, ordered that the defendant's exception be overruled, and that he answer over.

Affidavit.—Filed November 13th, 1866.

UNITED STATES OF AMERICA,
District of West Tennessee:

Personally appeared before me, Isaac Morrison, a commissioner of the United States circuit court for said district, Pinckney C. Bethell, to me personally known, who, being duly sworn, deposes and says that, about August, 1865, and the same day his pardon by the President of
41 the United States, was issued to him, and after said pardon was issued, he went before an officer of the United States and took and subscribed the amnesty oath in compliance with one of the conditions of said pardon. That said amnesty oath was handed by him into the office of the Secretary of State of the United States. That he also

kept a copy of said amnesty oath that was furnished him by said officer, which he afterwards sent said copy in a letter to Miles Taylor, esq., his attorney, in New Orleans, and has received a letter from said Taylor, in which he states that, after ample time for him to receive it, the same had not been received by him. He further states that he does not remember the name of the officer before whom he took said oath, nor does he remember the office he filled, but was fully satisfied that said officer was qualified to administer said amnesty oath.

(Signed) P. C. BETHEL.

Sworn to and subscribed before me this 1st day of November, 1866.
Witness my hand and seal.
[SEAL.] (Signed) ISAAC MORRISON,
Commissioner.

[5-c. int. rev. stamp affixed & cancelled.]

42 Also personally appeared before me, John M. Woodward, who, being duly sworn, deposes and says that he was with said Bethell when he took the amnesty oath as set forth in his affidavit above; that he saw said Bethel take and subscribe the same as stated by him; that he saw said pardon, and read the same, and knows he fully complied with the conditions of the same. The pardon was issued about the time stated, and said oath was taken immediately after the issuance of the same.

(Signed) JOHN M. WOODWARD.

Sworn to and subscribed before me this 1st day of November, 1866.
Witness my hand and seal.
[SEAL.] (Signed) ISAAC MORRISON,
U. S. Com'r.

[5-c. int. rev. stamp affixed & cancelled.]

Answer.—Filed November 17th, 1866.

U. S. circuit court.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

43 And now into court comes, by his attorneys, Edward Matthews herein made defendant, and for answer to the petition of plaintiff, pleads a general denial of each and every of the allegations therein contained, and specially denies that he is in any manner indebted unto said plaintiff.

Wherefore he prays that plaintiff's petition may be dismissed with all costs, and for general and equitable relief.

(Signed) W. S. BENEDICT,
Att'y for Defendant.

Hearing and continuance.—Extract from the minutes of Wednesday, April 29th, 1868.

P. C. BETHELL
vs.
EDW. MATTHEWS. } No. 3818.

This cause came up for trial—Miles Taylor for plaintiff; J. N. Lea &

Hornor & Benedict for defendant—when, after hearing the pleadings, evidence, and argument in part, the cause is continued till to-morrow at 11 a. m.

Submission of cause.—Extract from the minutes of Thursday, April 30th, 1868.

P. C. BETHELL
vs.
EDW. MATTHEWS. } No. 3818.

This cause came up pursuant to continuance—Miles Taylor for plaintiff; J. N. Lea and Hornor & Benedict for defendant—when, after hearing further argument, the court took time to consider.

Judgment.—Extract from the minutes of Wednesday, June 24th, 1868.

P. C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

For reasons orally assigned, it is ordered, adjudged, and decreed, that the plaintiff, Pinckney C. Bethell, do have and recover judgment against the defendant Edward Matthews, for the sum of five thousand
45 dollars with 8 % interest thereon, from 1st November, 1861, till paid, and costs of suit. And it is further ordered and decreed, that as regards the note for $5,000, dated October 4th, 1861, payable six months after date, there be judgment in favor of the defendant.

Rule for a new trial by plaintiff.—Extract from the minutes of Thursday, June 25th, 1868.

P. C. BETHELL
vs.
E. MATTHEWS. } No. 3818.

On motion of Miles Taylor, of counsel for the plaintiff, it is ordered, that the defendant show cause on Monday, June 29th, 1868, at 11 a. m., why a new trial in the case should not be granted on the grounds filed.

Grounds for a new trial.—Filed June 25th, 1868.

U. S. circuit court, district of Louisiana.

P. C. BETHELL
vs.
46 EDWARD MATTHEWS. } No. 3818.

P. C. Bethell, the plaintiff in the above suit, comes into court by the undersigned, his counsel, and prays for a new trial therein, on the ground that the judgment rendered on 24th of June, 1868, inst., is contrary to law and evidence.

(Signed) MILES TAYLOR,
(") CHA'S N. MORSE,
Of Counsel.

Marshal's return on rule, &c.

Received, June 26th, 1868, by the U. S. marshal, and on same day of June, 1868, served copy of within rule, &c., on Hornor & Benedict, attorneys named herein, in the hands if Jos. Horner. a member of said firm, personally, at office, 18 Carondelet street, in this city.

New Orleans, June 27th, 1868.

(Signed) S. W. REED,
D'y U. S. Marshal.

Rule of defendant for a new trial.—Extract from the minutes of Saturday, June 27th, 1868.

P. C. BETHELL
vs. } No. 3818.
E. MATTHEWS.

47 On motion of J. N. Lea and Horner & Benedict, attorneys for E. Matthews, defendant, ordered that plaintiff show cause on Monday, 29th instant, at 11 a. m., why a new trial should not be granted him on the judgment herein rendered on June 24th, 1868, so far as the same renders him liable on the note sued on, dated January 26th 1861, and due 1–4 November, 1861, and condemns him to pay the same, on the grounds filed.

Grounds.—Filed June 27th, 1868.

1st. That the same is contrary to law and evidence.

2nd. That he cannot be made liable on said note, as he was not a party thereto.

3rd. That if deemed a party thereto, he is not liable by reason of having received no notice of protest, and by the laches of plaintiff.

Marshal's return on rule of defendant.

Received, June 29th, 1868, by the U. S. marshal, and on same
48 day of June, 1868, served copy of within rule on Miles Taylor, attorney named herein, personally, at his office, 37 Camp street, in this city.

New Orleans, June 29th, 1868.

(Signed) S. W. REED,
D'y U. S. Marshal.

Order granting a new trial.—Extract from the minutes of Tuesday, June 30th, 1868.

P. C. BETHELL
vs. } No. 3818.
E. MATTHEWS.

The rules for a new trial taken by the plaintiff and defendant were called up—Miles Taylor for plaintiff; Hornor & Benedict for defendant—when it it is ordered that the rules be made absolute, that the judgment rendered on the 24th June, 1868, be set aside and that a new trial be granted in this case.

Motion and order—case to be tried before the circuit judge.—Extract from the minutes of Friday, December 10th, 1869.

49 P. C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

On motion of Hornor and Benedict, attorneys for defendant, ordered that this cause be continued, to be tried by the next circuit judge for this circuit.

Supplemental and amended answer and order thereon.—Filed January 9th, 1869.

U. S. circuit court.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

The supplemental and amended answer of defendant herein reiterates his original answer, and, further answering, especially denies that the firm of Brander & Hubbard was dissolved, as alleged by plaintiff, and denies the existence of any such firm as Brander, Chambliss & Co.

Wherefore he prays as hereinbefore prayed for judgment in his favor, with costs, and for general relief.

50 (Signed) BRADFORD, LEA & FINNEY,
" HORNOR & BENEDICT,
Att'ys for Def't.

Let this supplemental answer be filed.
January 9th, 1869.
(Signed) E. H. DURELL, *Judge.*

Marshal's return thereon.

Received January 9th, 1869, by the U. S. marshal, and, on 11th day of January, 1869, served copy of within supplemental and amended answer on Miles Taylor, attorney named herein, personally, at the U. S. court-room in this city.
New Orleans, January 12th, 1869.
(Signed) J. W. SAWYER,
D'y. U. S. Marshal.

Waiver of jury.—Filed April 28th, 1870.

U. S. circuit court.

P. C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

It is agreed between the parties to this cause that a trial by jury be waived, and same be tried by the court.
New Orleans, April 28th, 1870.
(Signed) MILES TAYLOR,
of Counsel for Plaintiff.
(Signed) LEA, FINNEY & MILLER.
" HORNOR & BENEDICT,
Att'ys for Def't.

51 *Hearing and submission of cause.—Extract from the minutes, April term*, 1870.

NEW ORLEANS, *Thursday, April 28th*, 1870.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, presiding judge.
" " E. H. Durell, district judge.

P. C. BETHELL
vs.
E. MATTHEWS. } No. 3818.

This cause came up for trial, the parties having in writing waived a trial by jury—Miles Taylor for plaintiff; Hornor and Benedict and Lea, Finney, and Miller, for defendant—when, after hearing the pleadings, evidence, and argument, the court took time to advise.

Defendant's bill of exception.—Filed April 28th, 1870.

U. S. circuit court, district of Louisiana, city of New Orleans.

52 PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

Be it remembered that, on the trial of this case, in open court, on Thursday, the 28th day of April, 1870, the counsel for plaintiff offered in evidence a certain note drawn by Jno. S. Chambliss, to the order of, and endorsed by, Brander & Hubbard, dated N. O., January 26th, 1861, and payable on 1st November, 1861, for $5,000, viz:

$5,000.. NEW ORLEANS, *January 26th*, 1861.

On the first day of November next, (1861,) I promise to pay to the order of Brander & Hubbard, at their c.-room, in New Orleans, five thousand dollars, for value received, with interest, at the rate of eight per cent. per annum, after maturity, until paid.

(Signed) JOHN S. CHAMBLISS.

(Endorsed:)
(Signed) JOHN S. CHAMBLISS.
BRANDER & HUBBARD.
P. C. BETHELL,*
(*erased on original.)

To which counsel of defendant objected on the grounds, following:

53 First. That defendant, Matthews, is not a party to said note; his name does not appear therein; nor is it alleged or a fact that he was a member of the firm of Brander & Hubbard, the endorsers.

Second. That defendant, Matthews, is sued herein "as endorser," and no legal notice of protest has been served on him or shown to have been issued.

But the court overruled these objections, and ordered the evidence to be received; when the counsel for defendant excepted to the said ruling of the court, and tendered this bill of exceptions praying the court to sign the same and make it a part of the record in this case.

[L. S.] (Signed) W. B. WOODS, *Judge.*

Defendant's bill of exceptions.—Filed April 28th, 1870.

U. S. circuit court, district of Louisiana, city of New Orleans.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

Be it remembered that, on the trial of this case, in open court,
54 on Thursday, the 28th day of April, 1870, the counsel for plaintiff offered in evidence, a certain note for $5,000, dated Port Gibson, October 4th, 1861, and payable six months after date, drawn by John S. Chambliss, to the order of and endorsed by himself, and endorsed by Brander & Hubbard, in liquidation, and by Brander, Chambliss & Co., viz:

$5,000 PORT GIBSON, MISS., *October 4th*, 1861.

Six months after date I promise to pay to the order of myself, at the office of Brander, Chambliss & Co., in the city of New Orleans, five thousand dollars, for value received, with interest, at the rate of eight per cent. per annum, after maturity until paid.

(Signed) JOHN S. CHAMBLISS.

(Endorsed:) (Signed) JOHN S. CHAMBLISS.
BRANDER & HUBBARD, *in liq'n.*
BRANDER, CHAMBLISS & CO.

To which counsel of defendant objected on the grounds following:

First. That said defendant's name does not appear on said notes.

Second. That the firm of Brander, Chambliss & Co., had no legal existence.

Third. That if said firm of B. C & Co., had an actual existence, it was dissolved by act of war, independent of the will of the parties,
long prior to the date of said note, and could not use the firm
55 name on that date to issue commercial paper.

Fourth. That defendant is sued herein "as endorser," and no legal notice of protest has been served on him or shown to have issued.

But the court overruled these objections, and ordered the evidence to be received; when the counsel for defendant excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same and make it a part of the record in this case.

[SEAL.] (Signed) W. B. WOODS, *Judge.*

Defendant's bill of exceptions.—Filed April 28th, 1870.

U. S. circuit court, district of Louisiana, city of New Orleans.

P. C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

Be it remembered that, on the trial of this case in open court on Thursday the 28th day of April, 1870, the counsel for plaintiff
56 offered in evidence a certain notarial act purporting to be an act of the dissolution of the firm of Brander & Hubbard, viz:

"Be it known that, on this twenty-seventh day of the month of March, in the year of our Lord one thousand eight hundred and sixty-

one, before me, Theodore Guyal, a notary public, duly commissioned and sworn, for the parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Edward Matthews, of the city and State of New York, herein acting in his capacity of agent and attorney-in-fact of James S. Brander, senior, late of this city, but now residing in the said city of New York, and also acting in his own name and behalf, James S. Brander, junior, Charles D. Hubbard, and Samuel L. Chambliss, all of this city. And the said Hubbard declared that for and in consideration of the sum of thirty-five thousand dollars to him in hand well and truly paid by the said Edward Matthews, the receipt
57 whereof is hereby acknowledged, he does by these presents, grant, bargain, sell, convey and transfer unto the said Edward Matthews, who accepts the same for himself, his heirs and assigns, all and singular the right, title, interest, property, claim, and demand of him, the said Hubbard, in and to the assets and effects of every kind and nature whatsoever, belonging to the co-partnership existing in this city under the style and firm of Brander & Hubbard, wherein the said Hubbard and the said James S. Brander, junior, are the general and active partners, and the said James S. Brander, senior, the partner in commendam, save and except, however, the interest of the said Hubbard in the result of all shipments made by the said Brander & Hubbard to Messrs. Rathbone, Bro's & Co., of Liverpool, England, now pending and inclosed, it being well understood and agreed by the parties hereto, that when the result of such shipments shall have been ascertained, one-half of the profit, if any, shall be paid to the said Hubbard in cash, and that if there be loss one-half thereof shall be paid by him.
58 And the said Edward Matthews, in the name and on behalf of the said James S. Brander, senior, and the said Charles D. Hubbard and James S. Brander, junior, in their own names and behalf, hereby declare the said firm of Brander & Hubbard to be dissolved by virtue of these presents.

"And the said James S. Brander, junior, Samuel L. Chambliss, and Edward Matthews, the latter in his own name and behalf, and as agent and attorney-in-fact of the said James S. Brander, senior, having by an act passed this day, in this office, formed a co-partnership in commendam, under the style and firm of Brander, Chambliss & Co., as successors of the said firm of Brander & Hubbard, hereby assume and bind the said new firm to pay and settle all the outstanding debts and liabilities of the said late firm of Brander & Hubbard, and to hold the said Hubbard harmless and forever indemnified against the same. And the said Edward Matthews binds himself to procure the approval and ratification of this act by the said James S. Brander, senior, without delay.

59 "Done and passed in my office in the city of New Orleans, on the day, month, and year first above written, in the presence of William G. Latham and Prosper Camus, witnesses, who have signed with the parties and me, the notary, after reading the whole.

(Signed) "EDWARD MATTHEWS,
"*For himself and James S. Brander, sr.*
"S. L. CHAMBLISS.
"JAS. S. BRANDER, JR.
"C. D. HUBBARD.

"W. G. LATHAM.
"P. CAMUS.
"THEO. GUYOL, *Not. Pub.*"

"I certify the foregoing to be a true copy transcribed from the original act of record on file among the archives of Theo. Guyol, late notary, of whom I am the successor in office.

"In faith whereof I grant these presents under my signature and the impress of my seal of office, in the city of New Orleans this the 3rd day of April, A. D. 1866.

[SEAL.] (Signed) "PROSPER CAMUS,
"*Not. Pub.*"

[5-ct. int. rev. stamp affixed and cancelled.]

60 To prove that Brander, Chambliss & Co., named therein, assume and bind themselves to pay, and settle all the outstanding debts and liabilities of said late firm of Brander & Hubbard. To which counsel for defendant objected on the grounds following:

First. That it is not proved said Brander, Chambliss & Co. had any legal existence.

Second. That the firm of Brander, Chambliss & Co., having no legal existence, and said act of dissolution and assumption being dependent upon the formation of said firm of B., C. & Co., the said firm of Brander & Hubbard was not dissolved and its debts not assumed.

But the court overruled these objections, and ordered the evidence to be received, when the counsel for defendant excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same and make it part of the record in this case.

[SEAL.] (Signed) W. B. WOODS, *Judge.*

61 *Defendant's bill of exceptions.—Filed April 28th*, 1870.

U. S. circuit court, district of Louisiana, city of New Orleans.

P. C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

Be it remembered that, on the trial of this case, in open court, on Thursday, the 28th day of April, 1870, the counsel for plaintiff offered in evidence a notarial act passed on 27th March, 1861, purporting to be an act of formation of the partnership of Brander, Chambliss & Co., in the words following, viz:

"Be it known that on this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and sixty-one, before me, Theodore Guyal, a notary public, duly commissioned and sworn, for the parish of Orleans, State of Louisiana, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared
62 Samuel L. Chambliss and James S. Brander, junior, both of this city, and Edward Matthews, of the city and State of New York, the latter acting as well in his own name as in his capacity of agent and attorney-in-fact of James S. Brander, senior, late of this city, but now residing in the city of New York, which said appearers declared that they had contracted and agreed, and do, by these presents, contract and agree to form a copartnership in commendam, for the transaction of the cotton factorage and general commission business in this city, on the terms and conditions following, to wit: The said copartnership shall commence on the day of the date hereof, and continue until the first day of July, eighteen hundred and sixty-two, unless sooner dissolved as hereinafter provided for. The said James S. Brander, junior, Samuel

L. Chambliss, and Edward Matthews, are hereby declared to be the active partners, and the said James S. Brander, senior, the partner in commendam, and the business of the copartnership shall be transacted and carried on under the style and firm of Brander, Chambliss &
63 Co. The said active partners acknowledge to have received the the sum of twenty thousand dollars from the said James S. Brander, senior, which he has invested in the capital of the said firm on behalf of, and as the share of his son, the said James S. Brander, junior, and the said Edward Matthews, in his capacity of agent of the said James S. Brander, senior, hereby binds his said constituent to invest in the capital of said firm, the sum of thirty thousand dollars, as the same shall be collected and received from the firm of Brander & Hubbard, of the city, of which he is a member, and to this extent alone, say thirty thousand dollars, shall the said James S. Brander, senior, be held liable, as partner in commendam, in the said firm of Brander, Chambliss & Co., and the said Edward Matthews, in his own name, has invested in the capital of the said firm the sum of thirty-five thousand dollars, now to be taken from the individual assets of the said James S. Brander, senior, in the said firm of Brander and Hubbard, and binds
64 himself to invest a further sum of fifteen thousand dollars in cash within sixty days from the date hereof.

"The respective interests or shares of the said copartners in the profits and losses of the said joint business are hereby declared to be as follows: That of the said Edward Matthews one-half, that of the said Samuel L. Chambliss one-third, and that of the said James S. Brander, junior, one-sixth; the said James S. Brander, senior, partner in commendam, being only entitled to interest at the rate of eight per cent. per annum on the amount of capital invested by him. In the transaction of the business of the said firm, it is hereby understood and agreed that the firm shall never purchase, nor hold at any one time more than one thousand bales of cotton, nor shall any purchases be made for shipment, but only for sale in New Orleans.

"Neither of the said active partners shall transact any business in his individual name, or for his separate benefit and advantage, nor
65 use the name of the firm in any manner or for any purpose other than the legitimate business of the copartnership.

"Proper books of account shall be kept by the said active partners, wherein shall be duly entered, and set down all purchases and sales, receipts and disbursements, and all other transactions of the firm, which books shall at all times be open to the inspection and examination of all the said contracting parties.

"An interest account shall be kept between the said co-partners, debiting and crediting each with interest at the rate of eight per cent. per annum on all sums of money received and paid or invested by him. In case of the violation of any of the foregoing stipulations by any one of the said copartners, the others, or either of them, shall have the right to terminate the copartnership. In case of the death of any of the said copartners his interest in the said firm shall thereupon terminate, but the amount, which shall then be due him, shall only be paid to his heirs or legal representatives at the expiration of the term of this copartnership, and in proportion as the debts are collected, or the assets
66 realized; it being well understood and agreed, however, that the heirs or legal representatives of the deceased shall have the right, if they think proper to take his place, and continue the copartnership, until its expiration by limitation.

"And it is further agreed and understood that a copy of this act shall

be immediately transmitted to the said James S. Brander, senior, for his approval, and that in case of his refusal the present contract shall become null and void.

"Done and passed in my office, in the city of New Orleans, on the day, month, and year first above written, in the presence of William G. Latham and Prosper Camus, witnesses, who have signed with the said parties and me, notary, after reading the whole.

(Signed) "S. L. CHAMBLISS.
"EDWARD MATTHEWS.
"JAMES S. BRANDER, JR.

"W. G. LATHAM.
"P. CAMUS.
"THEO. GUYOL, *Not. Pub.*"

"I certify the foregoing to be a true copy, transcribed from the original act of record on file among the archives of Theodore Guyol,
67 late notary, of whom I am the successor in office.

"In faith whereof I grant these presents under my signature and the impress of my seal of office, in the city of New Orleans, this the 3d day of April, A. D. 1866.

[SEAL.] (Signed) "PROSPER CAMUS,
"*Not. Pub.*"

[5-c. int. rev. stamp affixed & cancelled.]

To prove said partnership. To which counsel of defendant objected, on the grounds following:

First. That said act was never completed, and is null and void by reason of one party thereto refusing to sign the same.

Second. That by the terms of said act it was "agreed and understood that a copy of this act shall be immediately transmitted to the said James S. Brander, senior, for his approval, and that in case of his refusal the present contract shall become null and void," and it is not alleged or shown such approval was given.

Third. That by reason of such partnership not being formed, the firm of Brander & Hubbard was not dissolved, and its liabilities not assumed.

68 But the court overruled these objections, and ordered the evidence to be received, when the counsel for defendant excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same, and make it a part of the record in this case.

[SEAL.] (Signed) W. B. WOODS, *Judge.*

Defendant's bill of exceptions.—Filed April 28th, 1870.

U. S. circuit court, district of Louisiana, city of New Orleans.

P. C. BETHELL
vs.
E. MATTHEWS. } No. 3818.

Be it remembered that, on the trial of this case in open court, on Thursday, the 28th day of April, 1870, the counsel for plaintiff offered in evidence a certain notarial act purporting to be an act of procuration to Glendy Burke from Brander, Chambliss & Co., viz.:

69 "STATE OF LOUISIANA,
"*City of New Orleans:*

"By this instrument of procuration be it known that, on this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and sixty-one, before me, Theodore Guyol, a notary public in and for the city and parish of New Orleans, and State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereafter named and undersigned, personally came and appeared Edward Matthews, of this city, herein acting for and representing his commercial firm of Brander, Chambliss & Co., of this city, which is composed of himself and of Samuel L. Chambliss and James S. Brander, junior, as active partners, and of James Brander, senior, as partner in commendam, who declared that his said firm had made and appointed, and do by these presents make, nominate, ordain, authorize, constitute, and appoint, and in their place and stead depute and put Glendy Burke, also
70 residing in this city, to be their true and lawful attorney-in-fact, general and special, giving and by these presents granting unto the said attorney full power and authority for them, the said firm, aad in their name and behalf, and to their use, to conduct, manage, and transact all and singular their affairs, business, and concerns, in this city and State, of whatsoever nature and kind without exception or reservation whatsoever; to open all letters of correspondence addressed to them, and to answer the same; to make and endorse promissory notes in their name, and draw, endorse, and accept bills of exchange; to make checks, and draw money out of any bank wherein the same may have been deposited in the name or for account of the said firm; to deposite drafts, bills of exchange, acceptances, and promissory notes, or other obligations, for collection in any bank, and withdraw the same, or the amount thereof, at pleasure, by check or otherwise; to sell and transfer all or any shares of the capital stock of any bank or other corporate
71 body owned by the said firm, and receive and receipt for the dividends due or to become due thereon; to pledge and pawn all or any shares of the capital stock of any bank or other corporate body owned by the said firm; and to make and give any note or notes which may be necessary from time to time for the renewal of the same; to attend all or any meetings of creditors wherein the said firm may be interested, and vote in their name on all questions and cases that may be submitted; to attend all or any meetings of the stockholders of any bank or other corporate body wherein the said firm may be interested, and vote in their name on all questions and cases that shall or may be submitted; to borrow money from any bank or other monied institution on the notes or obligations of the said firm, or those of others which shall or may come into the said attorney's hands for their use, and make other notes or obligations from time to time for the renewal of all such
72 or any part or parts thereof; to sell, transfer, and convey, or to mortgage and affect all or any part or parts of the real, personal, or mixed estate of the said firm, and to lease, let, or hire all or any of their houses, property, and slaves, and receive and receipt for the rent and wages thereof as the same shall fall due; and for the full execution of the purposes aforesaid to make, sign, and execute in the name of the said firm all acts, whether of sale, mortgage, lease, release, contract, covenant, compromise, deed, agreement, or otherwise, that shall or may be requisite and necessary, and bind the said firm thereby as firmly as if the same were or had been their own proper acts and deeds; to sign all bonds or other acts required by the revenue department at the custom-house of this district, or elsewhere, and do all custom-house business

whatsoever; to receive and attend to all shipments or consignments of produce, goods, wares or merchandise that shall or may be made to them, either for their own account and risk or that of others, and to pursue the instructions of the owners, shippers, or others interested therein relative thereto; to receive and acknowledge notices of protest of all or any bills, drafts, or promissory notes to which the said firm may be a party, and to act for the said firm, and be their substitute in all cases wherein they may be appointed the agents or attorneys of others; and to ask, demand, have, take, and by all lawful means to recover and receive of and from all and every person or persons whomsoever, body or bodies corporate, all and every such sum or sums of money, goods, debts, property, and effects whatsoever, as now is or are, or may hereafter be, in his, her, or their custody or possession, due, owing, coming or belonging to them, the said firm, whether by bond, bill, note, book debt, account, consignment, bequest, or for and by what other reason and means soever; and to that end, with whom it may concern, to adjust and settle all accounts, and upon recovery and receipt in the premises, to make and give good and sufficient discharges and acquittances; to appear before all courts of law and equity, there to do and prosecute and defend, as occasion shall require, or to compromise, compound, and agree in the premises, by arbitration or otherwise, as the said attorney shall in his discretion think fit; and generally to do and perform all and every other act, matter, and thing whatsoever as shall or may be requisite and necessary touching and concerning the affairs, business, and concerns of the said firm, as fully, amply, and effectually, and to all intents and purposes, with the same validity, as if all and every such act, matter, or thing were or had been herein particularly stated, expressed, and especially provided for, or as they, the said firm, could or might do if personally present; also with full power of substitution and revocation, the said firm hereby agreeing to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue of this act of procuration.

"Thus done and passed at New Orleans the day and year aforesaid, in the presence of William G. Latham and Prosper Camus, witnesses, hereto required, and residing in this city, who have signed these presents with the said appearer and me, notary, after reading of the act.

("Signed) "EDWARD MATTHEWS.

"W. G. LATHAM.

"P. CAMUS.

"THEO. GUYOL, *Not. Pub.*

"I certify the foregoing to be a true copy, transcribed from the original act of record on file among the archives of Theodore Guyol, late notary, of whom I am the successor in office.

"In faith whereof I grant these presents under my signature, and the impress of my seal of office, at New Orleans, this 13th day of December, A. D. 1866.

[SEAL.] (Signed) "PROSPER CAMUS,
"*Not. Pub.*"

[5-c. int. rev. stamp affixed & cancelled.]

To prove that said Burke was the duly constituted agent of said B., C. & Co. To which counsel of defendant objected, on the grounds following:

First. That the firm of B., C. & Co., having no legal existence, could grant no power of attorney.

Second. That said power of attorney, if of any effect when given, became null and void as to defendant, by act of war, on 16th August, 1861.

But the court overruled these objections, and ordered the evidence to be received, when the counsel for defendant excepted to the said
76 ruling of the court, and tendered this bill of exceptions, praying the court to sign the same, and make it a part of the record in this case.

[SEAL.] (Signed) W. B. WOODS, *Judge.*

Defendant's bill of exceptions.—Filed April 28th, 1870.

U. S. circuit court, district of Louisiana, city of New Orleans.

P. C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

Be it remembered that, on the trial of this case in open court, on Thursday, the 28th day of April, 1870, the counsel for plaintiff offered in evidence a certain notarial act, purporting to be an act of procuration, from defendant to Glendy Burke, viz:

"STATE OF LOUISIANA,
"*City of New Orleans:*

"By this instrument of procuration be it known that, on this twenty-sixth day of April, in the year of our Lord one thousand eight
77 hundred and sixty-one, before me, Theodore Guyol, a notary public in and for the city and parish of New Orleans, and State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereafter named and undersigned, personally came and appeared Edward Matthews, residing in this city, who declared that he had made and appointed, and doth by these presents make, nominate, ordain, authorize, constitute and appoint, and in his place and stead depute and put Glendy Burke, also residing in this city, to be his true and lawful attorney-in-fact, general and special, giving and by these presents granting unto the said attorney full power and authority for him, and in his name and behalf and to his use, to conduct, manage, and transact all and singular his affairs, business, and concerns in this State, of whatsoever nature and kind, without exception or reservation whatsoever; to open all letters of correspondence addressed to him, and to answer the same; to make and endorse promissory notes in his name, and draw, endorse, and accept bills of exchange; to make
78 checks and draw money out of any bank wherein the same may have been deposited in the name or for account of said constituent; to deposite drafts, bills of exchange, acceptances and promissory notes or other obligations, for collection in any bank, and withdraw the same, or the amount thereof, at pleasure, by check or otherwise; to sell and transfer all or any shares of the capital stock of any bank or other corporate body owned by the said constituent, and receive and receipt for the dividends due or to become due thereon; to pledge and pawn all or any shares of the capital stock of any bank or other corporate body owned by the said constituent, and to make and give any note or notes which may be necessary from time to time for the renewal of the same; to attend all or any meetings of creditors wherein the said con-

stituent may be interested, and vote in his name on all questions and cases that may be submitted; to attend all or any meetings of the stockholders of any bank or other corporate body, wherein the said constituent may be interested, and vote in his name on all questions or
79 cases that shall or may be submitted; to borrow money from any bank or other monied institution, on the notes or obligations of the said constituent or those of others, which shall or may come into the said attorney's hands for his use, and make other notes or obligations from time to time for the renewal of all such or any part or parts thereof; to sell, transfer, and convey, or to mortgage and affect all or any part or parts of the real, personal or mixed estate of the said constituent, and to lease, let, or hire all or any of his houses, property, and slaves, and receive and receipt for the rent and wages thereof, as the same shall fall due; and for the full execution of the purposes aforesaid, to make, sign, and execute in the name of the said constituent all acts, whether of sale, mortgage, lease, release, contract, covenant, compromise, deed, agreement, or otherwise, that shall or may be requisite and necessary, and bind him thereby as firmly as if the same were or had been his own proper acts and deeds; to sign all bonds or other acts required by the revenue department at the custom-house of this
80 district or elsewhere, and do all custom house business whatsoever; to receive and attend to all shipments or consignments of produce, goods, wares, or merchandise that shall or may be made to him either for his own account and risk, or that of others, and to pursue the instructions of the owners, shippers, or others interested therein, relative thereto; to receive and acknowledge notices of protest of all or any bills, drafts, or promissory notes to which the said constituent may be a party, and to act for the said constituent, and be his substitute in all cases wherein he may be appointed the agent or attorney of others; and to ask, demand, have, take, and by all lawful means to recover and receive of and from all and every person or persons whomsoever, body or bodies corporate, all and every such sum or sums of money, goods, debts, property and effects whatsoever, as now is or are, or may hereafter be in his, her, or their custody or possession, due, owing, coming or belonging to him, the said constituent, whether by bond, bill, note, book-debt, account, consignment, bequest, or for and by what
81 other reason and means soever; and to that end, with whom it may concern, to adjust and settle all accounts, and upon recovery and receipt in the premises, to make and give good and sufficient discharges and acquittances; to appear before all courts of law and equity, there to do and prosecute and defend, as occasion shall require, or to compromise, compound, and agree in the premises by arbitration or otherwise, as the said attorney shall in his discretion think fit; and generally to do and p rform all and every other act, matter, and thing whatsoever, as shall or may be requisite and necessary touching and concerning the affairs, business, and concerns of the said constituent as fully, amply, and effectually, and to all intents and purposes with the same validity as if all and every such act, matter, or thing were or had been herein particularly stated, expressed, and especially provided for, or as he the said constituent could or might do if personally present; also with full power of substitution and revocation, the said constituent hereby agreeing to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue of this
82 act of procuration.

Thus done and passed at New Orleans, the day and year afore-

said, in the presence of William G. Latham and Prosper Camus, witnesses hereto required, and residing in this city, who have signed these presents with the said appearer, and me, notary, after reading of the act.

(Signed) "EDWARD MATTHEWS.
"W. G. LATHAM.
"P. CAMUS.
"THEO. GUYOL, *Not. Pub.*

"I certify the foregoing to be a true copy transcribed from the original act of record on file among the archives of Theo. Guyol, late notary, of whom I am the successor in office.

"In faith whereof, I grant these presents under my signature and the impress of my seal of office, at New Orleans, this the 13th day of December, A. D. 1866.

[SEAL.] (Signed) "PROSPER CAMUS.
"*Not. Pub.*"

[5-c. int. rev. stamp affixed and cancelled.]

To prove that said Burke was the duly-constituted agent of said defendant.

To which counsel of defendant objected, on the grounds following:

83 First. That said power of attorney, if of any effect, when given, ceased to have such effect, and became null and void by act of war, independent of the will of the parties, on 16th August, 1861.

Second. That said Glendy Burke has testified that he ceased to act under said power of attorney prior to August 16th, 1861.

But the court overruled these objections, and ordered the evidence to be received; when the counsel for defendant excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same, and make it a part of the record in this case.

[SEAL.] (Signed) W. B. WOODS, *Judge.*

Judgment.—From judgment docket.

United States circuit court, fifth circuit, and district of Louisiana, April term, 1870.

NEW ORLEANS, *Monday, May 2d*, 1870.

84 Court met pursuant to adjournment. Present, Hon. W. B. Woods, presiding judge. Present, Hon. E. H. Durell, district judge.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

For reasons orally assigned by the court, it is ordered, adjudged, and decreed that judgment be entered in favor of the defendant, with costs.

Judgment rendered May 2d, 1870.
Judgment signed May 6th, 1870.

(Signed) W. B. WOODS, *Judge.*

Statement of facts.—Filed June 10th, 1870.

U. S. circuit court, district of Louisiana.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

Statement of the facts proved in the cause.

1st. John S. Chambliss made his promissory note, dated New Or-
85 leans, January 26th, 1861, for the sum of $5,000, payable on the 1st day of November, 1861, to the order of Brander & Hubbard, at their counting-house in New Orleans, with interest, at the rate of 8 per cent. per annum, after maturity, until paid, which was endorsed by Brander & Hubbard, and was negotiated by them, and passed out of their hands on the 23d day of March, 1861, at a discount of 12 per cent., which said note, and the endorsements on the same, were received in evidence on the trial of the cause, and are made part of this statement, and are in the words and figures following to wit:

(NOTE.—The notes and endorsements herein referred to, are to be found transcribed at page 28.)

2d. The partnership of Brander & Hubbard was a commercial partnership, established and doing business in the city of New Orleans, and was composed of James S. Brander, jun'r, and Charles D. Hubbard, as the general and active partners, and of James S. Brander, sen'r, partner in commendam.

3d. On the 27th day of March, 1861, James S. Brander, jun'r,
86 Samuel L. Chambliss, and Edward Matthews, acting in his own name, and as agent and attorney-in-fact of James S. Brander, sen'r, (the said James S. Brander, sen'r, not being then in the State of Louisiana,) appeared before Theodore Guyol, a notary public in the city of New Orleans, and executed, by signing the same in the presence of the said notary and two witnesses, the public act in writing, of which an authentic copy was received in evidence on the trial of the cause, and was marked "C," and which is made a part of this statement, and is in the following words:

(NOTE.—The act in writing, herein referred to, to be found transcribed at page 61.)

4th. On the 27th day of March, 1861, and after the execution of the public act or instrument in writing, the copy of which was received in evidence, and marked "C," the said James S. Brander, jun'r, and Charles D. Huhbard, the general and active partners in the commercial partnership of Brander & Hubbard, and the said Samuel L. Chambliss, and the said Edward Matthews, acting in his capacity of agent and attorney-in-fact of James S. Brander, sen'r, and also acting in his
87 own name and behalf, appeared before Theodore Guyol, a notary public, in the city of New Orleans, and executed, by signing the same in the presence of the said notary and two witnesses, the public act in writing, of which an authentic copy was received in evidence on the trial of the cause, and was marked "D," and which is made a part of this statement, and is in the words following:

(NOTE.—The act in writing, herein referred to, to be found transcribed at page 56.)

5th. Immediately after the execution of the two said instruments in writing, on the said 27th day of March, 1861, the said James S. Brander, jun'r, Samuel L. Chambliss, and Edward Matthews, engaged in the transaction of business in the city of New Orleans, under the firm name of Brander, Chambliss & Co., and continued to carry on business under that name, the said Edward Matthews being then in the city of New Orleans, and continuing to be in said city of New Orleans, until on or about the 26th day of April, 1861. On the said 26th day of
88 April, 1861, the said Edward Matthews appeared before Theodore Guyol, a notary public, in the city of New Orleans, and executed by signing the same in the presence of the said notary and two witnesses, the public act in writing of which an authentic copy was received in evidence on the trial of the cause, and was marked "E," and is made a part of this statement, and which is in the following words:

(NOTE.—The act in writing herein referred to, to be found transcribed at page 65.)

And on the said 26th day of April, 1861, the said Edward Matthews appeared before Theodore Guyol, a notary public, in the city of New Orleans, and executed by signing the same in the presence of the said notary and two witnesses, the public act in writing, of which an authentic copy was received in evidence on the trial of the case, and was marked "F," and which is made a part of this statement, and which is in the following words:

(NOTE.—The act in writing herein referred to, to be found transcribed at page 76.)

89 6th. Edward Matthews left the city of New Orleans, and the State of Louisiana, immediately after the 26th of April, 1861, and returned to New York, where he had before resided and where he continued to reside for a number of years, until the termination of the late war, and still does reside, and after the departure of the said Edward Matthews, from the city of New Orleans, he, the said Edward Matthews, carried on a daily correspondence by letter with Glendy Burke, the managing clerk of the firm of Brander, Chambliss & Co., in relation to the business of the said firm until all communication between New York and New Orleans was interrupted by the blockade, and was never afterwards resumed.

7th. Copies of the two public acts passed before Theodore Guyol, notary public in New Orleans, on the 27th day of March, 1861, and of which authentic copies were received in evidence on the trial of the case and were marked "C & D," were sent by Edward Matthews by mail to James S. Brander, sen'r, to Nassau, and were received by the said James S. Brander, sen'r, in Nassau, in May, 1861, together
90 with a document to be signed by him, approving the dissolution of Brander & Hubbard, and of the copartnership of Brander, Chambliss & Co., as per act before Theodore Guyol, March 27th, 1861, and he at that time refused to sign it. And that the said James S. Brander, sen'r, when afterwards asked by Edward Matthews, in New York, to sign the said document approving the dissolution of Brander & Hubbard and the copartnership of Brander, Chambliss & Co., again refused to sign it.

8th. John S. Chambliss, at Port Gibson, Mississippi, October 4th, 1861, made his promissory note for the sum of $5,000, payable six months after date, to the order of himself at the office of Brander, Chambliss & Co., in the city of New Orleans, with interest at the rate of 8 per cent. per annum, after maturity until paid, which note was en-

dorsed by the said John S. Chambliss and by "Brander and Hubbard, in liquidation" through James S. Brander, jun'r, one of the partners of the firm of Brander & Hubbard, and by the firm of "Brander, Chamblis & Co.," the endorsement of the said firm name of "Brander,
91 Chambliss & Co., being in the handwriting of James S. Brander, jun'r, one of the partners, and the said note, after being so endorsed, was negotiated by the said firm of Brander, Chambliss & Co. to P. C. Bethell, the plaintiff in the cause, at a discount of 10 per cent., on the 12th day of October, 1861, which said note and the endorsements thereon were received in evidence on the trial, and are in the words and figures following, to wit:

(NOTE.—The note and endorsements herein referred to, to be found transcribed at page 31.)

9th. On the 22d day of October, 1861, the following advertisement was inserted in the "Picayune," a daily newpaper published in the city of New Orleans, viz:

"*Dissolution.*

"The interest of Mr. Edward Matthews, of New York, in our firm, having ceased by the operation of law, the remaining partners will continue the business on their own account.

(Signed) "BRANDER, CHAMBLISS & CO.

"NEW ORLEANS, *October 22d*, 1861."

And this was inserted by one of the partners of the firm of "Brander, Chambliss & Co.," for the purpose of avoiding the action of
92 the confederate receiver under the confederate law, and to protect the interest of Mr. Matthews in the partnership, which was done without the knowledge of Edward Matthews.

10th. Proclamations were issued by the President of the United States as follows, viz:

"*Proclamations of the President.*

"June 25th, 1860.—Whereas an extraordinary occasion has occurred' rendering it necessary and proper that the Senate shall be convened, &c

"The President calls upon them to assemble, on 26th June, 1860.

"February 11th, 1861.—Whereas objects of interest to the United States require that the Senate should be convened, &c.

"The President calls upon them to assemble, on 4th March, 1861.

"April 15th, 1861.—Whereas the laws of the United States have been for some time past and now are opposed, and the execution thereof is obstructed in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by
93 the power vested in the marshals by law.

"The President calls out 75,000 militia.

"April 19th, 1861.—Whereas an insurrection &c., has broken out in the States &c., and the revenue laws cannot be executed, &c.

"The President establishes a blockade of the ports of S. C., Ga., Ala., Fla., Miss., La., and Texas.

"April 27th, 1861.—Extends the blockade to ports of Virginia and North Carolina.

"May 3d, 1861.—Whereas existing exigencies demand immediate and adequate measures for the protection of the National Constitution, &c.

"The President calls for 42,034 volunteers, and increases the Army and Navy.

"May 10th, 1861.—Whereas an insurrection exists in the State of Florida, by which the lives, liberty, and property of loyal citizens of the United States are endangered.

"The President declares martial law upon the islands of Key West, Santa Rosa, and Tortugas, and suspends the writ of habeas corpus.

"August 12th, 1861.—Day of humiliation and prayer.

94 "August 16th, 1861.—The President declares the inhabitants of the States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi, and Florida are in a state of insurrection against the United States, and that all commercial intercourse between the same and the inhabitants thereof, and the citizens of other States, and other parts of the United States, is unlawful, and will remain unlawful until such insurrection shall cease, or has been suppressed," &c.

11th. The note for $5,000, dated January 26th, 1861, was presented for payment and payment demanded, and was protested for non-payment, and the parties to the same were notified thereof, as will appear from the instrument of protest and the certificate given by the notary of the manner of notifying the said parties, which was received in evidence on the trial of the cause, and is marked "A," and are made part hereof, and which said statement of protest and said certificate of the notary, are in the following words and figures, to wit:

(NOTE.—The statement of protest and certificate of the notary herein referred to, to be found transcribed at page 29.)

95 12th. The note for $5,000, dated October 4th, 1861, was presented for payment and payment demanded, and was protested for non-payment, and the parties to the same were notified thereof, as will appear from the instrument of protest and the certificate given by the notary of the manner of notifying the said parties, which was received in evidence on the trial of the cause, and is marked "B," and are made part hereof, and which said instrument of protest and certificate of the notary are in the following words and figures, to wit:

(NOTE.—The instrument of protest and the certificate given by the notary herein referred to, to be found transcribed at page 32.)

The several notes and acts herein referred to as being received in evidence were so received by the court after hearing the objections made by defendant to their admissibility, and subject to said exceptions, which exceptions were then and there set forth in writing by said defendant and tendered the court for its signature and seal, and are in the words and figures following, to wit:

96 (NOTE.—The bills of exceptions of defendant herein referred to, are to be found transcribed at page 51 to 83, inclusive, and are made a part of this record.)

(Signed) MILES TAYLOR,
Att'y for P. C. Bethell.

(Signed) LEA, FINNEY AND MILLER, and
HORNER AND BENEDICT,
Att'ys for Defendant.

Petition for writ of error.—Filed June 10th, 1870.

U. S. circuit court, district of Louisiana.

PINCKNEY C. BETHELL
vs.
EDWARD MATTHEWS. } No. 3818.

To the honorable the circuit court of the United States for the district of Louisiana:

The petition of Pinckney C. Bethell, of the city of Memphis, in the State of Tennessee, respectfully represents: That a final judgment was rendered against him on the day of May, 1870, in the above-entitled cause, by which he believes himself to be aggrieved; that he is informed and believes there is error in the said judgment, and that he is
97 entitled to a writ of error in the said cause on giving bond with security conditioned according to law in such sum as the court may determine.

Wherefore your petitioner prays that a writ of error may issue in the case, returnable at the next December term of the honorable the Supreme Court of the United States on petitioner giving bond and good security in the sum fixed by the court.

And petitioner further prays that the defendant may be cited, according to law, to answer the said writ of error in the said Supreme Court of the United States.

(Signed) MILES TAYLOR,
Att'y for Petitioner.

Order on foregoing petition.

A writ of error is allowed in this case, as prayed for, and according to law, returnable to the Supreme Court of the United States, at Washington, on the first Monday of December next, the petitioner giving bond in the sum of five hundred dollars, with good and solvent
98 security, conditioned as the law directs.

(Signed) W. B. WOODS,
Judge 5th Circuit, & Dist. of La.

JUNE 10TH, 1870.

Bond for writ of error.—Filed June 10th, 1870.

Know all men by these presents that we, Pinckney C. Bethell, of Memphis, in the State of Tennessee, as principal, and Robert Hare, of the city of New Orleans, State of Louisiana, as security, are held and firmly bound to Edward Matthews, of the city of New York, and State of New York, his certain attornies, executors, administrators, or assigns, in the full and just sum of five hundred dollars, well and truly to be paid by us, and for the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed, and sealed with our seals, and dated this tenth day of June, in the year of our Lord one thousand eight hundred and seventy.

Whereas lately, at a circuit court of the United States, holding sessions in and for the district of Louisiana, in a suit depending
99 in the said circuit court, No. 3818 on the docket of the said court, wherein the said Pinckney C. Bethell is plaintiff and the said Edward Matthews is defendant, judgment was rendered against the said

Pinckney C. Bethell as aforesaid; and the said Pinckney C. Bethell having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edward Matthews, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such that, if the said Pinckney C. Bethell shall prosecute his writ of error to effect, and answer such judgment and all damages and costs if he fail to make his plea good, then the obligation to be void; otherwise to remain in full force and virtue.

(Signed) P. C. BETHELL,
By MILES TAYLOR. [L. S.]

(Signed) ROB'T HARE. [L. S.]

100 Sealed and delivered in presence of—
(Signed) MILES TAYLOR.
" W. J. HARE.

101 UNITED STATES OF AMERICA,
Circuit Court of the United States,
Fifth Circuit, and District of Louisiana:

CLERK'S OFFICE.

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 100 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Pinckney C. Bethell vs. Edward Matthews, No. 3818 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 9 day of September, A. D. 1870.

[SEAL.] D. URBAN, *Clerk.*

[5-cent U. S. int. rev. stamp, D. U., Sept. 9th, 1870.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 9th day of September, A. D. 1870.

E. H. DURELL.

[5-cent U. S. int. rev. stamp, E. H. D., Sept. 9th, 1870.]

102 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or one of you, between Pinckney C. Bethell and Edward Matthews, a manifest error hath happened, to the great damage of the said Pinckney C. Bethell, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 10th day of June, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.]

D. URBAN,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court, No. 3818. Pinckney C. Bethell versus Edward Matthews. Writ of error. Filed June 10th, 1870. F. B. Vinot, d'y cl'k.

103 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Edward Matthews, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit, and district of Louisiana, wherein Pinckney C. Bethell is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this eleventh day of June, in the year of our Lord one thousand eight hundred and seventy.

W. B. WOODS,
Judge 5th Circuit, & District of La.

104 (Indorsed:) United States circuit court, No. 3818. Pinckney C. Bethell vs. Edward Matthews. Citation in error.

Marshal's return.

Received Jun. 13, 1870, by the U. S. marshal, and on the 9th day of September, 1879, served a copy hereof on Hornor & Benedict, attorneys for Edward Matthews, by handing the same to Jos. P. Horner, one of the members of said firm of Hornor & Benedict.

S. W. REED,
D'y U. S. Marshal.

N. O., *Sept.* 9, 1870.

(Indorsement on cover:) 295. Pinckney C. Bethel, plaintiff in error, vs. Edward Matthews. Louisiana C. C. U. S.
Filed 17th November, 1870.

In the Supreme Court of the United States.

PINCKNEY C. BETHELL,

Plaintiff in Error,

VS.

EDWARD MATTHEWS.

PLAINTIFF'S BRIEF.

MILES TAYLOR,
CHARLES N. MORSE, } Of Counsel.

In the Supreme Court of the United States.

PINCKNEY C. BETHELL, *Plaintiff in Error*,

vs.

EDWARD MATTHEWS.

PLAINTIFF'S BRIEF.

This action is brought against Edward Matthews, as a member of the commercial partnership of Brander, Chambliss & Co., established and doing business in the city of New Orleans, for the recovery of the amounts due on two promissory notes, as follows:

One for $5000, made by John S. Chambliss, dated January 26, 1861, and payable 1st of November, 1861, to the order of Brander & Hubbard, and by them endorsed, and negotiated to plaintiff on the 23d of March, 1861; and

One for $5000, made by John S. Chambliss, in the State of Mississippi, and by him endorsed, dated October 4th, 1861, and payable at six months; and also endorsed by Brander, Chambliss & Co., and by them negotiated to the plaintiff on the 12th of October, 1861. Printed record, pp. 10–12.

The commercial firm of Brander & Hubbard, the endorsers on the note dated on the 26th of January, 1861, and payable on the 1st of November, 1861, and by which it was negotiated to plaintiff on the 23d of March, 1861, was dissolved on the 27th of March, 1861, four days after the negotiation of the note to the plaintiff.

leans, January 26th, 1861, for the sum of $5000, payable on the 1st of November, 1861, which was endorsed by Brander & Hubbard, and was negotiated by them and passed out of their hands on the 23d of March, 1861, before the formation of the partnership of Brander, Chambliss & Co., and before the dissolution of the partnership of Brander & Hubbard, and the assumption by Brander, Chambliss & Co. of the debts and liabilities of Brander & Hubbard. Printed record, p. 31.

John S. Chambliss made the note for $5000, dated October 4th, 1861, at Port Gibson, in the State of Mississippi, which was payable in six months, at the office of Brander, Chambliss & Co., in the city of New Orleans. This note was indorsed by Brander, Chambliss & Co., and was negotiated by that firm to the plaintiff on the 12th day of October, 1861. Printed record, pp. 32, 33.

These notes were presented for payment, payment demanded, and were protested for non-payment, and the parties duly notified of the protest. Printed record, page 34.

In the act by which the partnership of Brander, Chambliss & Co. was formed, it was stipulated that a copy of the act should be sent to James S. Brander, Sen., for his approval, and that in case of his refusal, the contract should be null and void. Printed record, 24, 25. And when a copy was presented to him he refused to approve it.

The action in this case was brought to recover the amount of the principal and interest specified in the note endorsed and negotiated by Brander & Hubbard on the 23d day of March, 1861, under the assumption of debts and liabilities of the firm of Brander & Hubbard, made by Edward Matthews, as a member of the commercial partnership of Brander, Chambliss & Co., on the 27th of March, 1861, and to recover the amount of the note endorsed by Brander, Chambliss & Co., and negotiated to the plaintiff on the the 12th of October, 1861, from Edward Matthews, in his capacity of partner in the commercial partnership of Brander, Chambliss &

Co., then established and doing business in the city of New Orleans and State of Louisiana.

The defendant, Edward Matthews, contested the right of the plaintiff to recover, on two grounds. First, That the partnership of Brander, Chambliss & Co. never had any existence, because there is no evidence that James S. Brander, Sen., ever approved the act of the 27th of March, 1861, forming the partnership of Brander, Chambliss & Co., and that in consequence the assumption of the outstanding liabilities of the firm of Brander & Hubbard, made by James S. Brander, Jr., Samuel L. Chambliss and Edward Matthews, acting on the day of its formation, in their proper persons as members of the partnership, and their subsequent action in making or endorsing notes or other commercial paper in the partnership name, gave rise to no legal obligation upon them as members of that partnership, or as individuals; and, Second, That the war which broke out between the States engaged in the late insurrection against the authority of the United States, and which was waged between those States, of which Louisiana was one, and the rest of the United States, had the effect of dissolving the partnership on the breaking out of the war; so that no act done by the partners in the State of Louisiana could bind, or be obligatory upon, the defendant, who was, they say, a citizen of the State of New York.

The decision in the lower Court was against the right to recover; and the plaintiff has brought the case before this Court by writ of error, and alleges that he is entitled to recover the amount claimed in his petition, and that upon the facts, as stated in the Record, there was error in the judgment of the lower Court in deciding:

First, That there was no commercial partnership in existence on and after the 27th day of March, 1861, established and doing business in the city of New Orleans, of which Edward Matthews was a member, because of the refusal of James S. Brander, Sen., to ap-

prove the act passed before Theodore Guyol, a notary public, on the 27th of March, 1861.

Second, That the obligation of Edward Matthews to pay the note endorsed by Brander & Hubbard, and negotiated by them to the plaintiff on the 23d of March, 1861, was destroyed by the war which soon after broke out between the insurrectionary States, of which Louisiana was one, and the United States; and,

Third, That the recent war between the insurrectionary States and the United States had the effect of dissolving the partnership of Brander, Chambliss & Co.

We will now consider these errors separately and in their chronological order:

First—Was there, on the 27th day of March, 1861, and subsequently thereto, a commercial partnership known by the firm name of Brander, Chambliss & Co., which had an existence and was established in the city of New Orleans, and engaged therein, agreeably to the custom and usage of the mercantile world, in the carrying on and transaction of commercial business?

From the statement of the facts proved in the cause, it appears that such a commercial firm known as "Brander, Chambliss & Co." had a place of business in the city at that time; that James S. Brander, Jr., Samuel L. Chambliss and Edward Matthews, calling themselves members of that firm, passed acts, granted powers of attorney, made and endorsed notes and other commercial paper, and contracted obligations of various kinds towards others, in the partnership name; and that they kept a regular set of commercial books, in which their transactions were entered, in the usual mercantile manner, in the name of the partnership. All the evidence that can be adduced, to show the existence of any commercial partnership, is before the Court with respect to the one in question. The partnership was an existing fact. It was formed by the consent of the partners. It carried on its proper business during its allotted term, through the agency of the partners, or of their attor-

neys in fact, duly appointed in the most public and solemn form known to our law. And yet, the Court held, in effect, that the partnership of "Brander, Chambliss & Co." never had any legal existence, because there is no evidence before the Court to show that James S. Brander, Sen., had given his approval to the act passed on the 27th of March, 1861.

Before discussing the effect of a refusal on the part of James S. Brander, Sen., to approve and become a party to that act, it will be proper to examine the entire act. The act was executed for the purpose, as is stated in it, of creating a partnership *in commendam*, to be known by the name of Brander, Chambliss & Co., in which James S. Brander, Jr., Samuel L. Chambliss and Edward Matthews were to be the general and active partners, and James S. Branker, Sen., was to be a partner *in commendam*. Upon analyzing the act, it will be found to contain the following recitals and stipulations: First—The three active partners acknowledge to have received $25,000 from James S. Brander, Sen., as the share of his son, James S. Brander, Jr., in the new partnership. Second: Edward Matthews is declared to have invested $30,000 in the partnership, and to have bound himself to invest in it a further sum of $15,000 in sixty days. Third—Edward Matthews agreed that James S. Brander, Sen., should put in $30,000, and stipulated that he should be bound only to that extent.

The parties then went on, and formally stipulated and agreed that the shares of the parties in the profits, etc., should be as follows, viz.: That Edward Matthews should be entitled to one-half, Samuel L. Chambliss one-third, and James S. Brander, Jr., to one-sixth—*making the entire three-thirds of the profits*, etc. And, *that James S. Brander, Sen., should only be entitled to eight per cent. interest on what he put in.*

And in conclusion, it was stipulated that a copy of the act should be sent to James S. Brander, Sen., for his approval, and that, in case of his refusal, the contract should be null and void.

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From the statement of the facts proved in the cause, it appears that such a commercial firm known as "Brander, Chambliss & Co." had a place of business in the city at that time; that James S. Brander, Jr., Samuel L. Chambliss and Edward Matthews, calling themselves members of that firm, passed acts, granted powers of attorney, made and endorsed notes and other commercial paper, and contracted obligations of various kinds towards others, in the partnership name; and that they kept a regular set of commercial books, in which their transactions were entered, in the usual mercantile manner, in the name of the partnership. All the evidence that can be adduced, to show the existence of any commercial partnership, is before the Court with respect to the one in question. The partnership was an existing fact. It was formed by the consent of the partners. It carried on its proper business during its allotted term, through the agency of the partners, or of their attor-

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And in conclusion, it was stipulated that a copy of the act should be sent to James S. Brander, Sen., for his approval, and that, in case of his refusal, the contract should be null and void.

And then the question arises, "what is the contract that was to be null and void, if James S. Brander, Sen., refused his approval? Was it the partnership between James S. Brander, Jr., Samuel L. Chambliss, and Edward Matthews, into which the parties had put a large amount of capital, and which on the very day on which their stipulation was made, had, by the joint action of all of them in their proper persons, assumed all the outstanding liabilities of another partnership, to whose business the new partnership had succeeded, and which was daily contracting obligations towards third persons? Certainly not; for James S. Brander, Sen., had no interest in that partnership, and was not a partner in it, as he was not to participate in the profits made by it. C. C. 2772, 2782; and it was declared in the act that "James S. Brander, Sen.," should "only be entitled to 8 per cent. interest on what he put in."

The only relation really provided for in the act in question, then, between James S. Brander, Sen., and the other parties to the act, was that of becoming a lender to it of money. Matthews, his attorney in fact, bound James S. Brander, Sen., "to put in $30,000;" or, in other words, made an engagement for him and in his name, that he, James S. Brander, Sen., should lend the concern $30,000 at eight per cent. interest. Matthews, however, had no authority to bind James S. Brander, Sen, to this; and in consequence, it was provided that James S. Brander, Sen., might refuse to lend his money to them, if he so pleased, and that the contract made for him and in his name should be null and void if he refused his approval, in order that Matthews, who acted for him and in his name, but without authority, should incur no personal responsiblility from the stipulation, as he would have done if this clause had not been inserted. C. C. 1803, 2979.

But whatever might have been the position of James S. Brander, Sen., as to James S. Brander, Jr., Samuel L. Chambliss, and Edward Matthews, the liabilities of these three persons to third

persons could not be in any manner affected by it. A partnership *in commendam* is one in which the *commendam* partner incurs but a limited liability. This species of partnership must be in writing. C. C. 2816, 2817. The written act is for the benefit and advantage of the commendam partner, and is necessary to protect him against incurring the unlimited responsibility of a general partner in a commercial partnership.

If the proposed partnership *in commendam* never existed between James S. Brander, Jr., Samuel L. Chambliss, and Edward Matthews, as general partners, and James S. Brander, Sen., as partner *in commendam*, the commercial partnership between the general partners named in the instrument, under the name and style of "Brander, Chambliss & Co." was nevertheless in existence, and Edward Matthews, as one of the members of the firm, was bound for and by its contracts.

A commercial partnership is not created by written act. It results from the fact of the association of persons together for doing a commercial business, with a view to their mutual participation in its profits, and their actual carrying on such business together. C. C. 2772, 2796, 2782. Here the partners (and especially Edward Matthews, the defendant in this case,) went on and did business with third persons as members of a commercial partnership, under the style of Brander, Chambliss & Co., as appears: 1st. From the statement of facts proved in the cause; 2d. By the power of attorney of the partnership, represented by Edward Matthews, the defendant, given to Glendy Burke by public act dated on the 26th of April, 1861; and, 3d. By the declaration of Edward Matthews, contained in the notarial act by which the partnership of Brander & Hubbard was dissolved, and the new partnership of "Brander, Chambliss & Co." purchased their assets, and assumed their liabilities.

The commercial partnership of Brander, Chambliss & Co. had a separate, distinct and independent existence. A partnership in

partnership, it would only have had the effect of rendering it incapable for the future of doing any act which would create an obligation binding on one of its former members, who had thus become an enemy to the other members of the partnership. The obligations, however, which had been contracted by the partnership before the breaking out of the war, were left undisturbed. They were still valid and binding on the parties; though, owing to the existence of the war, creditors living in the territory of one belligerent could not enforce them against a debtor living in the territory of the other belligerent. War, under such circumstances, suspends the execution or enforcement of an obligation, but does not destroy it; (Lawrence's Wheaton, Ed. of 1863, p. 541, and the cases there cited;) and, therefore, there can be no room for doubt as to the obligation of Edward Matthews to the plaintiff, on the note negotiated to him by Brander & Hubbard, on the 23d of March, 1861, both as an individual, and in his capacity of member of the commercial partnership of Brander, Chambliss & Co.

III. Did the recent war between the insurrectionary States, of which Louisiana was a part, and the United States, which began on the 13th day of April, 1861, when the attack was made on Fort Sumter by the forces of the insurrectionary States, have the effect of dissolving the partnership of Brander, Chambliss & Co., which had been formed in the city of New Orleans, on the 27th day of March, 1861, and was afterward constantly engaged in the transaction of business, under the supervision of Edward Matthews, or of an agent or attorney in fact, specially appointed by him for that purpose on the 26th day of April, 1861?

We believe that no such dissolution of the partnership, in point of fact, took place as a consequence of that war; because, 1st, Louisiana was an integral part of the Union; and the old condition of things, so far as to the relations between man and man, and to the operation of the laws regarding the rights of individuals

under contracts, were entirely unaffected by the mere fact of the existence of that war, and continued to be unaltered during its whole duration, except in the particular instances in which they were changed by the exercise of the legislative power of Congress, as made manifest and declared in positive provisions contained in acts specially framed with that express view. And, 2d, because Edward Matthews, the defendant, is estopped from asserting, as against persons who contracted with the partnership of Brander, Chambliss & Co., that he was a citizen of New York, inasmuch as after the war had begun, and whilst he was actually in the city of New Orleans, and State of Louisiana, he, Edward Mathews, voluntarily took upon himself the character and position of a person residing in the city of New Orleans, and engaged there in the carrying on of commercial business therein.

I. That war has the effect of dissolving contracts of partnership which had been entered into between persons of different nationalities, and belonging to different sovereign States, recognized as members of the great family of nations, when it breaks out between those States, admits of no dispute. The existence of international wars, under the law of nations, convert all the members of the respective warring States into enemies of each other, "and all the members of both nations are authorized to commit hostilities against all the members of the other, in every case and under every circumstance permitted by the general laws of war." Lawrence's Wheaton on International Law, Ed. of 1863, p. 518. One of the immediate and necessary consequences of such a state of things is, "the interdiction of all commercial intercourse between the States at war, without the license of their respective Governments." "Although there be no special interdiction of such intercourse, as is often the case, commerce is forbidden by the mere operation of the law of war."—Ibid. 544.

But no such condition of things existed in this country during

the late war between the different sections of the United States. The inhabitants of the State of Louisiana were not, by the mere fact of the breaking out of the war, converted into enemies of the States which remained loyal to the Union, in such a sense that "they were authorized to commit hostilities against" all the members or residents of the loyal States, "in every case and under every circumstance permitted by the laws of war." Notwithstanding the existence of the war, Louisiana, remained, *de jure*, a member of the Union of these States; and her people, instead of having a right to carry on war against the loyal States, owed obedience to the laws of the United States. The insurrection, which gave rise to the war, failed; and the question now before the Court is this: Are not courts of justice and private individuals bound to consider the state of things existing before the war as having remained unaltered and unchanged by the mere fact of the existence of the recent war, so far as relates to the binding force and obligation of contracts entered into by citizens of the United States with each other? That this should be so seems to be in consonance with the principles of the public law of the world, as recognized by the action of nations, through their judicial tribunals, as referred to in Lawrence's Wheaton (p. 47); and that it was so regarded by the Government of the United States is certain, if we are permitted to draw any conclusion on the subject from its action with respect to the inhabitants of the insurrectionary States, from the time the war broke out and up to its final termination. To show this, we will give a brief summary of the facts as made manifest by the several proclamations of the President of the United States, and by Acts of Congress passed with reference to the new condition of affairs resulting from the war.

The Acts of Congress approved Feb. 28, 1795, March 3d, 1807, and March 2d, 1833, (1 U. S. Stat. at Large, 424; 2 U. S. Stat. at Large, 443; and 4 U. S. Stat. at Large, 634,) gave to the President, whenever the laws of the United States were obstruct-

ed, by the employment of military force, or by any other unlawful means, authority to issue his proclamation declaring such fact; requiring all such military or other force to disperse; and to call forth the militia of the several States, and to employ the land and naval forces of the United States to suppress the same, and cause the laws to be duly executed. Immediately after the attack on Fort Sumter, the President of the United States, under the authority of these Acts, issued his proclamation of the 15th of April, 1861, in which he declared the fact that the laws of the United States were opposed and the execution of them obstructed; called forth the militia of the several States of the Union, to the aggregate number of 75,000, to suppress the opposition to the laws; commanded the persons engaged in opposing the laws of the United States, and obstructing their execution, to disperse; and informed the people that the first service which would be assigned to the forces then called forth would be, "to re-possess the forts, places, and property which had been seized from the Union." 4 U. S. Stat. at Large, 1258,

Four days after this, on the 19th of April, 1861, the President issued another proclamation, in which, after referring to the fact of the insurrection against the Government of the United States, "in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas," and to the further fact, that the "persons engaged in such insurrection" had "threatened to grant pretended letters of marque, to authorize the bearers thereof to commit assaults on the lives, vessels, and property of good citizens of the country, he declared that, with a view" to the protection of the public peace, and the lives and property of good and orderly citizens, pursuing their lawful occupations, until Congress "should have assembled and delibearated on the said unlawful proceedings, or until the same shall have ceased, he had deemed it advisable to set on foot a blockade of the ports within the States aforesaid," in pursuance of the laws of the United

States, and the law of nations; and stated that for that purpose a competent force would be stationed so as to prevent the entrance and exit of vessels at "the ports aforesaid," and directed the capture of vessels violating such blockade, and the carrying of them "to the nearest convenient port, for such proceedings against her and her cargo, as prize," as might be "deemed advisable."—12 U. S. Stat. at Large, 1259.

On the 3d day of May, 1861, the President issued another proclamation, calling for 42,034 volunteers for three years in the military service of the United States, and ordering the regular army of the United States, and of the seamen in the regular service, to be largely increased; and at the same time earnestly invoked the co-operation of all good citizens, in the measures adopted "for the effectual suppression of unlawful violence, for the impartial enforcement of constitutianal laws, and for the speediest possible restoration of peace and order," etc. After this, the conflict of arms went on. The Government of the United States enforced a rigid blockade of the ports of the insurrectionary States; and vessels violating the blockade of these ports were captured on the high seas, and sent in for condemnation.

On the 4th day of July, 1861, the Congress of the United States assembled at Washington after a great civil war, extending over a large portion of the national territory, had been in progress for upwards of two months, and the first step which it took in view of the condition of things, was to pass the act approved July 13, 1861, entitled "An Act further to provide for the collection of duties on imports, and for other purposes." (12 U. S. Statutes at Large, 555.) The first three sections of this act, contained provisions in relation to the collection of the revenue in the States where there was opposition to the enforcement of the laws of the United States. The fourth section empowered the President to close the ports of entry in any collection district in which the duties could not be "collected by the ordinary means

and in the ordinary way." The fifth section provided that, whenever the President should have called forth the militia to suppress combinations against the laws of the United States, and the insurgents had failed to disperse by the time directed by the President, and where the insurgents claimed "to act under the authority of any State or States," and such claim was not disclaimed or repudiated by the persons exercising the functions of Government in such State or States," or in the part or parts of States etc., then, and in such case it "should be lawful for the President, by proclamation, to declare that the inhabitants of such State or part of State, etc, were "in a state of insurrection against the United States," and that "thereupon all commercial intercourse by and between the same and the citizens thereof, and the citizens of the rest of the United States," should "cease and be unlawful, so long as such condition of hostility" should continue; and that "all goods and chattels, wares and merchandise, coming from said State or section into the other parts of the United States, and all proceeding to such State or section, by land or water," should, "together with the vessel or vehicle conveying persons to and from such State or section, be forfeited to the United States," etc. Section sixth of the act, declared that, "from and after fifteen days after the issuing of" the proclamation provided for in the fifth section, "any ship or vessel, belonging in whole or in part to any citizen or inhabitant of said State or part of State, whose inhabitants' were 'so, declared in a state of insurrection, found at sea, or in any port of the rest of the United States, "should be forfeited to the United States. And the ninth section of the act provided for proceedings for the condemnation of property seized under this act," in the courts of the United States, in any district into which the property seized might be taken, etc.

The proclamation provided for in the fifth section of the act of July 13th, 1861, was issued on the 16th of August, 1861; (12 U. S. Statutes at Large, 1262;) and "all goods and chattels, wares and

merchandise." in course of transportation from one section to another, in violation of the prohibition contained in the fifth section, with the vessels or vehicles conveying the same, etc., and any ship or vessel found at sea or in any port of the rest of the United States, as mentioned in the sixth section of the act, were subject to seizure and condemnation, as forfeited to the United States.

By the act approved August 6th, 1861, (12 U. S. S. at Large, 319,) all property which any person, his agent, attorney or employee, purchased or acquired, sold or gave, with intent to use or employ the same, or suffer the same to be used or employed, in aiding, abetting or promoting the insurrection, or which the owner knowingly used or employed, or consented to the use and employment of, in the aiding, abetting, or promoting the insurrection, was declared to be lawful subject of prize and capture, wherever found, and it was made the duty of the President of the United States "to cause the same to be seized, confiscated and condemned."

The only other act passed by Congress during the existence of the war, which has any bearing upon the subject under consideration is that approved on the 17th July, 1862. (12 U. S. Stat. at Large, 589.) The first section of that act prescribed and fixed a penalty for treason against the United States. The second section provided and fixed a penalty for inciting, setting on foot, assisting, or engaging in any rebellion or insurrection against the authority of the United States, or the laws thereof, etc.; and the third and fourth sections were subsidiary to the two previous ones. The fifth section declared that all the property of certain classes of persons, who should thereafter, assist and give aid and comfort to the then existing rebellion, should be forfeited to the United States; whilst the most of the other sections provided for the seizure and condemnation of the property subjected to forfeiture by the fifth section.

And now we beg leave to be permitted to ask, what were the

relations really existing between the territory embraced in the insurrectionary States and sections, and the rest of the United States? An examination of the proclamations, and of the Acts of Congress will make it abundantly plain to the apprehension of all:

1st. That the territory embraced in those States and sections were regarded as constituting portions of the United States.

2d. That their inhabitants were not only not looked upon as enemies, in the sense in which the name is applied to the citizens or subjects of a foreign State with which another State is at war; but that they were held to be citizens of the United States, and as such subject, not only to all the laws of the United States which were in force when the rebellion broke out; but also to all the laws of the United States which were enacted during the whole course of the war caused by the rebellion.

3d. That no property or right of any kind, belonging to the inhabitants of those States or sections, was subject to capture as prize of war, or liable to seizure and condemnation, or forfeited to the United States, except under express and distinct provisions of the laws of the United States, specially enacted with that view, and which subjected the property to capture as prize of war; or made it liable to seizure and condemnation, as forfeited to the United States, for contravention of the laws of the United States, and by the proper force and vigor of those laws, in contradistinction to the laws of nations. And,

4th. That whilst the United States invoked and enforced the laws of nations against the citizens or subjects of foreign States, or their property, where those citizens or subjects, or their property, were engaged in attempts to violate the belligerent rights of the United States, in relation to the maintenance of blockades, or to the interdiction of trade in articles contraband of war, it is equally true our own citizens were only required to conform their actions to the provisions of the laws of the United States, and that

their acts were judged of and their rights determined with reference to them alone.

We cannot believe there is any one, who gives this subject a fair consideration, who can, for a moment, doubt the correctness of the conclusions to which we have arrived. And if this be admitted, what then? Why, it necessarily follows, that the old relations between our people, with respect to contracts, and the obligations resulting from contracts, remained unaffected and unimpaired by the civil war which had broken out and was carried on among them; and that if any one is to escape from the binding force and effect of acts done under the authority of contracts, entered into voluntarily by himself, he must find the means of escape in the operation of some provision or principle of the municipal laws of the country, and not in the fact that his contracts were dissolved or destroyed by war.

The counsel of the defendant, in the Court below, on the argument of the cause, cited several cases decided by the Supreme Court of the United States, as furnishing authority for adopting a different conclusion. But we think an examination of those cases will show that their view of their character is erroneous.

The first case cited was that known as the "Prize Cases," (2 Black, 635,) in which the brig Amy Warwick, the schooner Crenshaw, the barque Hiawatha, and the schooner Brittanic were condemned as prize of war. Two of these vessels, the Amy Warwick and the Crenshaw, were vessels owned in Virginia, and the other two belonged to neutral nations. The vessels were all captured from the 17th of May, to the 10th of July, 1861, and carried in for adjudication as prize of war, on the ground that they had violated the blockade. The right of blockade is a belligerent right, and exists, necessarily, under the law of nations, with respect to civil wars, as well as to wars between Sovereign States. The only questions decided by the court in those cases were :

First, That a civil war was in existence. Second, That the fact of its existence gave the Government of the United States the right to establish a blockade. Third, That a blockade had been established. And Fourth, That it had been violated; and that in consequence, the vessels violating the blockade were subject to condemnation as prize of war.

The next case cited was that of the Venice, 2 Wallace, 258. This vessel, with a cargo of cotton on board, was captured in Lake Pontchartrain, on the 15th of May, 1862, and was taken to Key West and libelled as prize of war. In the opinion of the court, in that case, it is declared (p. 274) that "the rule which declares that war makes all the citizens or subjects of one belligerent, enemies of the government, and of all the citizens or subjects of the other, applies equally to civil and to international wars." But the court added: "Either belligerent may modify or limit its operation as to persons or to territory of the other;" and that "in the absence of such modification or restriction, judicial tribunals cannot discriminate in its application." Though it was held that the vessel and her cargo were enemies' property, when the vessel was anchored in Lake Pontchartrain, it was decided that it could not be regarded as such after General Butler's proclamation, dated on the 1st of May, 1862, and the vessel and cargo were both released.

The third case was that of Mrs. Alexander's cotton. (2 Wallace, 404.) In this case it was held that the cotton, which was captured on Red River, in the parish of Rapides, in the spring of 1861, was not maritime prize; and it was ordered to be turned over to the agents of the Treasury Department, to be disposed of under the act of March 12th, 1863. The cotton, it was said, was enemy's property, "and liable to capture and confiscation by the adverse party." In commenting on this right of capture of property on land, the Court observed: "It may now be regarded as

substantially restricted to special cases dictated by the necessary operations of the war." And the Court add: "In the case before us, the capture seems to have been justified by the peculiar character of the property and by legislation," and refer especially to the act approved August 6th, 1861, as justifying it. (p. 419, 420.)

The last case cited was that of the William Bagaley, 5 Wallace R. 377. The William Bagaley was a steamer leaving the port of Mobile bound to Havana. She was captured on the high seas while attempting to pass the blockading squadron, July 17th, 1863, and was liable to condemnation under the laws of nations, for violating the blockade established by one of the parties to a war.

It is evident, from what has been said, that there is not only nothing in any of the decisions in the case cited, which militates against the position we have taken; but that there is much in the cases of the Venice and of Mrs. Alexander's cotton (2 Wallace, 258 and 404), which looks toward a recognition of the principle that we are contending for, viz: That every question growing up with respect to the rights of individuals, or rights of property within the limits of the States recently engaged in the war consequent on the insurrection of those States against the authority of the United States, is to be determined by the municipal laws of the country, and not by the principles of the law of nations.

A civil war between the different members of the same society, is what Grotius calls a mixed war; it is, according to him, public on the side of the established Government, and private on the part of the people resisting its authority, But the general usage of nations regards such a war as entitling both the contending parties to all the rights of war as against each other, and even as respects neutral nations. Lawrence's Wheaton, 521, 522. And then the question arises, what are the rights of war? Each party has the right to establish blockades, and to subject to capture and

condemnation, as prizes of war, all articles contraband of war. Each party has the right to do all the injury in its power to the other, and to have the acts of those in their military service done to the injury of the other, considered as acts of war and not of criminal violence, for which punishment to individuals can be meted out. Each party may punish spies. And each party have a right to have their prisoners treated with care and kindness; and, in general, to have "all those maxims of humanity, moderation and honor," which obtain among men, observed in the conduct and progress of the war in which they are engaged. Vattel, Phila. Ed. 1849, p. 425, §294. But these rights, which spring up between belligerents, relate to the waging, or carrying on of the war itself, and have no connection whatever with the effects or consequences of the war upon the rights and obligations of the people with respect to each other.

There is no similarity in the position of the members of the same political society who are engaged on opposite side in a strife among themselves, and the citizens of two sovereign and independent States engaged in an international war. The established Government has a right to the obedience of all its citizens or subjects. It depends upon its own sovereign will, in what light the people arrayed against it shall be regarded. It may consider them in every sense as enemies, and sever all the relations and bonds of union among them at once, in such a manner that the laws of nations are the only laws operating in common upon the people of the two sections. Or, it may assert the authority of the Government *de jure*, and thus leave them in the position which they occupied before the war, with respect to their fellow citizens or subjects, as to all the relations which formerly existed between them. Brown vs. United States, 8 Cranch, 110, 114, 115, 116.

And this is precisely what was done by the Government of the

United States as to the States and parts of States in insurrection. It declared that the authority of the National Government rightfully existed over them. It required the people in them to obey its laws, and imposed penalties on them for acts done by them in contravention of those laws. If the property of any individual was made subject to seizure and condemnation, as prize of war, it was not because he was an "enemy," but because he engaged in rebellion in contravention of the Act approved August 6, 1861, (12 U. S. Stat. at Large, 319.) If it was subjected to seizure and condemnation because it was in the course of being transported from one of the contending sections to the other, it was not under the law of nations, because all commercial intercourse between belligerent nations is prohibited, or a blockade was violated, but because all commercial intercourse between the two sections was prohibited by the fifth section of the Act of July 13, 1861. (12 U. S. Stat. at Large, 237.) If the property of a citizen or inhabitant of one of the States or parts of States in insurrection was subjected to capture on the high seas, etc., it was not because it was prize of war under the law of nations, but it was made so by the sixth section of the same act.

And hence the authority of the Courts of the United States for condemning the property of citizens—no matter what may be the language of the decrees—is to be sought for in the laws of the United States, and not in the law of nations.

And it therefore follows that the law of nations was at no time permitted by the Government of the United States to enter into and operate within its territorial limits, on the rights of any of the people of the States; and that they were regulated and made to depend, at all times, on the municipal laws of the country. And it also necessarily follows, as corollary from this: that any rights growing out of contracts entered into in March, 1861, or in October, 1861, remained entirely undisturbed and unaffected by the fact of the existence of the war, because there was no legisla-

tion whatever on the part of the United States in relation to them.

2. Edward Matthews is estopped from asserting, as against persons who contracted with the partnership of Brander, Chambliss & Co., after the war began, on the 13th of April, 1861, that he was a citizen of New York.

The partnership between James S. Brander, Jr., Samuel L. Chambliss, and Edward Matthews, under the name of Brander, Chambliss & Co, was entered into by Edward Matthews, in the city of New Orleans, some time after the secession of the State of Louisiana from the Union, and after the authorities of the State had seized upon the forts of the United States, which had been constructed and possessed by the United States within its territorial limits. In the two notarial acts passed on the 27th day of March, 1861, and to which the defendant was a party, he is described as "of the City of New York." At the time when those two acts were drawn up and signed, it is altogether probable the parties to them never contemplated the possibility of the breaking out of a war, which would have the effect of interrupting communication between Louisiana and New York. But the war actually began on the 13th day of April, 1861, sixteen days after the formation of the partnership; and the proclamation of the President establishing the blockade of the ports of Louisiana was issued on the 19th day of the same month.

The war then had begun. The belligerent right of blockade had been exercised. It was certain that all communication between New York and New Orleans was about to be interrupted, and that the relations between the two sections were to be of such a character that their inhabitants would be placed in the attitude of enemies to each other. It was, at that time, both the right and the duty of the defendant to choose between the sections. He was at liberty to withdraw from the partnership of Brander, Chambliss & Co., and to return to the city of New York; and he

was equally at liberty to elect to continue in the partnership, and to reside in Louisiana, if the breaking out of the war would have the effect of dissolving the partnership, if he were a resident of New York. That such was his position, and such his right, the defendent well knew: and he made his election to remain a member of the partnership, and to cast his lot with the people of Louisiana. That this was so, is abundantly shown by the facts proved in the cause, as will be seen by reference to the statement of those facts. He took an active part in the management and direction of the business of the partnership, whilst present in the city of New Orleans, up to the end of April, and after his departure from New Orleans, he gave written directions for the management of the concern for several months, and until the progress of the war and blockade put an end to the transmission of his letters to New Orleans. But this is not all: the record furnishes written proof of the election made by him. On the 26th day of April, 1861, the defendant, Edward Matthews, acting for and in the name of the partnership of Brander, Chambliss & Co, executed a power of attorney by notarial act, in the city of New Orleans, before Theo. Guyol, notary public, in which he appointed Glendy Burke the attorney in fact of the partnership, with full power to manage the partnership business, and also manifested his intention to cast his lot with the people of Louisiana, by describing himself in the act as "of New Orleans." And this declaration that he was "of New Orleans," was repeated in a second power of attorney executed on the same day and before the same notary, in which he gave full power to Glendy Burke to act for him in his individual capacity. Printed record, pages 31, 32, 26, 28.

The fact that one is born in one place or another, determines his citizenship, and to what Government he owes allegiance; but it depends entirely upon his own will whether he will preserve

that citizenship, or adhere to the counrty to which he owes his allegiance, in the event of its being engaged in war. If the country in which he was born is involved in a war, and he sees fit to engage in business in the enemies' country, his national character is changed during the existence of that war, so that he is regarded as an enemy, and his property, wherever found, becomes subject to capture as prize of war. His national character, during the existence of a war, is determined by his acts, and not by his citizenship. The Portland, 3 Robinson's R. 40, 44, 45; The Citto, Ibid. 39, 40; The Vigilantia, 1 Robinson's R. 13. If a person born in one country, is domiciliated in another while the country of his birth, and that of his domicil are at war, the place of his birth is immaterial. "He must be considered as a subject of the State in which he resides and carries on commerce; and doing so in a country with which we were at war; to all civil purposes he was an enemy." O'Meally vs Newell, 1 Campbell's Reports, 482.

And now, is it not clear, the national character of Edward Matthews was so affected by his acts in Louisiana, in 1861, that any captured property belonging to him would have been condemned in the courts of the United States, on the evidence contained in the Record, if its release or condemnation had depended upon the fact, whether or not he would be regarded as belonging to Louisiana or New York, under the principles recognized in administering the law of nations? And if this is true, then we ask: How is it that the national character of Edward Matthews could be such as to subject his property to condemnation in a prize court, because of his being the member of a commercial partnership in Louisiana, and carrying on trade there; and at the same time, entitle him in a civil or common law court, to be discharged from the obligations imposed on him by contracts entered into in Louisiana? The mere statement of the proposition, is sufficient to show the absurdity of any such pretension.

IN THE HONORABLE THE

Supreme Court of the United States.

DECEMBER TERM, 1870.

PINCKNEY C. BETHELL,
PLAINTIFF IN ERROR,
vs.
EDWARD MATTHEWS.
} *No.* 295.

In Error to the Circuit Court of the United States for Louisiana.

BRIEF OF COUNSEL OF EDWARD MATTHEWS, DEF'T IN ERROR.

Abstract.

This suit was commenced in one of the State courts of Louisiana, in the city of New Orleans, by the plaintiff in error, a citizen of Louisiana, against the defendant, Edward Matthews, a citizen of New York.

See Record, page 1.

The defendant, on first entering his appearance in the State court, petitioned to have the cause transferred, under the 12th section of the judiciary act of 1789, to the circuit court of the United States for the district in which the State court was held.

See Record, page 7.

The proper formalities having been complied with, the cause was transferred.

See Record, page 9.

The petition filed by the plaintiff in error claimed from the defendant ten thousand dollars with interest, being the aggregate amount of two promissory notes for five thousand dollars each, drawn by John S. Chambliss, of Wilkinson county, Mississippi: the one dated New Orleans, January 26, 1861, payable on the 1st November, 1861, to the order of and endorsed by Brander & Hubbard; the other dated Port Gibson, Mississippi, October 4, 1861, payable six months after date to his own order, and endorsed by said Chambliss, Brander & Hubbard, in liquidation, and Brander, Chambliss & Co.

That said notes were duly protested for non-payment, and due notice given to the parties.

That the firm of Brander & Hubbard, the endorser on the notes, was dissolved on the 17th (27th) of March, 1861; and that in the written instrument evidencing this dissolution Edward Matthews, the defendant in error here, was a party; that in said instrument it was stipulated that the firm of Brander, Chambliss & Co. should assume the indebtedness of Brander & Hubbard.

That by the same instrument the firm of Brander, Chambliss & Co. was formed, of which James S. Brander, Jr., Samuel L. Chambliss, both of New Orleans, and Edward Matthews, the defendant in error, were declared to be the general and active partners.

That the copartnership of Brander, Chambliss & Co. expired in July, 1862, by limitation, and that Edward Matthews was owner of one half interest in the partnership, and is bound for the full amount of the said two notes.

See Record, page 1.

The notes are copied in the Record, as they were produced on the prayer of oyer of the defendant in the circuit court.

See Record, pages 10, 11, and 12.

The answer in the circuit court pleaded a general denial.

See Record, page 16.

On the 24th June, 1868, the case came up for trial, and after hearing evidence and argument the court gave judgment against the defendant in error for the sum of $5,000, with interest from 1st November, 1861; and judgment in his favor on the note for $5,000, dated October 4, 1861, payable six months after date.

See Record, page 17.

But this was set aside and a new trial ordered.

See Record, page 18, at foot.

After this an amendment to the answer was filed by leave of court, denying that the firm of Brander & Hubbard was dissolved, and denying the existence of any such firm as Brander, Chambliss & Co.

See Record, page 19.

By written agreement between the parties trial by jury was waived, and case tried by court alone.

See Record, page 19, foot.

After hearing evidence and argument, the court gave judgment in favor of the defendant below, and defendant in error here, in full.

See Record, page 30, foot.

From this judgment the case has been brought by writ of error, by the plaintiffs below, to this Court.

See Record, page 35, top.

A paper purporting to be a statement of facts is found copied into the transcript of the Record.

See Record, pages 31 to 34.

There are found in the Record six bills of exceptions taken in the progress of the cause, all by the defendant below and defendant in error here.

See Record, pages 20 to 30, inclusive.

POINTS.

First. The paper, purporting to be a statement of facts found in the Record, cannot be looked at by this Court; it really forms no part of the Record, properly so called.

The judgment of the circuit court in the cause was pronounced on the 2d, and signed on the 6th May, 1870.

See Record, page 30, at foot.

The statement of facts was filed on the 10th June, thirty-nine days after the judgment, and was made by the attorneys in the case, and not by the judge.

See Record, pages 31 and 34.

But a statement, or finding of facts, in order to enable this Court to review the case, must be made by the court that tried the cause, and cannot be made effective by any other mind.

See section 4, act of March 3, 1865, 13 Statutes at Large, page 501.

Kearny *vs.* Case, decided at this term.

Second. There is, then, only a general finding in favor of the defendant, which must have the same effect as a similar finding of a jury. The case is thus presented to this Court as if on a writ of error to a judgment of the Court rendered on a general verdict in favor of the defendant in error, and where there is no question arising on the pleadings, and where there was no ruling on the trial of the cause against the plaintiff in error. In such a case the judgment of the lower court must be affirmed.

See Avenduño *vs.* Gary, 8 Wallace, 376.

Respectfully submitted.

THOMAS J. DURANT,
For Defendant in Error.